

TO TAKE CARE OF THEM: AN ETHICAL CASE STUDY
OF THE CANAL INCIDENT

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General Studies

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ABSTRACT

TO TAKE CARE OF THEM: AN ETHICAL CASE STUDY OF THE CANAL INCIDENT, by Chaplain (MAJ) Emmitt Maxwell Furner II, 132 pages.

This thesis examines the moral permissibility of First Sergeant Hatley's decision to kill, and influence others to kill, four unarmed detainees near Baghdad Iraq in the spring of 2007. Ethics is an important topic for all members of the profession of arms to engage. With the seemingly constant news reports of ethical indiscretions by US Army Soldiers, many of them by senior US Army leaders, the need for continued PME dialogue within the ranks has become exceedingly clear. This Thesis will strive to do more than simply understand what took place next to that Baghdad canal; it will evaluate and analyze the killings. The questions the will attempt to be answered are, did First Sergeant Hatley possess an inherent right to defend himself against threats of deadly force? Because insurgent activity was so deadly, and because of significant planning deficiencies at the strategic level of war that created ambiguity at the tactical level, was taking care of the detainees his only option for survival? Could the detainees have been considered, by their very existence and presence in the AO regardless of their current posture at the time, imminent threats? Was he morally justified in acting preemptively?

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ACRONYMS

CDA	Civil Defense Attorney
COP	Combat Outpost
DHA	Detainee Holding Area
FOB	Forward Operating Base
IED	Improvised Explosive Device
MNFI	Multinationals Forces Iraq
PME	Professional Military Ethics
POW	Prisoner of War
RPG	Rocket Propelled Grenade
SJA	Staff Judge Advocate
WMD	Weapons of Mass Destruction

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CHAPTER 1

INTRODUCTION

Lieutenant Calley came out and said, “take care of these people.” So we said, “Okay, so we stood there and watched them. He went away, then he came back and said, “I thought I told you to take care of these people.” We said, “We are.” He said, “I mean, kill them.

— Dennis Conti, Lieutenant William Calley, Jr.,
Court Martial Transcripts

Sergeant First Class Joseph Mayo testified that, “So then he [First Sergeant Hatley] asked me how I felt about taking care of the detainees.” The prosecuting attorney asked Sergeant First Class Mayo, “What was your impression of what he meant by that?” Sergeant First Class Mayo answered simply, “To kill them, sir.”

— Staff Sergeant Joseph P. Mayo,
Court Martial Transcripts

I don’t know if it’s possible to be too close to your Soldiers and to love them too much. My Soldiers were like my sons and there’s nothing I wouldn’t do to take care of them and protect them.”

— First Sergeant John Hatley,
Court Martial Transcripts

Purpose

The author began this project with the loftiest of academic ideals of moral values and ethical behavior. He wanted to produce a work of great importance to the profession of arms, specifically in the area of Professional Military Ethics (PME). He wanted to create a work that would engage the reader and ultimately contribute to some greater good. He also wanted to answer some questions; some professional and some personal. For several years, the author has been intrigued by an incident that took place during US military operations in Baghdad, Iraq in 2007, in which a US Army first sergeant and three of his subordinate non-commissioned officers (NCO) killed four unarmed detainees.

Having served in the armed forces of the United States his entire adult life, the author has come to believe a first sergeant is one of the most critically important leadership positions in all of the military. It is the first sergeant who is directly responsible for the training, care, and leadership of Soldiers. It is the first sergeant who takes care of Soldiers. It has also been the author's experience that few people can complete these immensely important duties better than a first sergeant. The author has personally been the recipient of the care, training, and leadership of a first sergeant on more than one occasion. So, when a first sergeant was convicted of murder and sentenced to life in prison, the author became interested.

This thesis was never intended to be a legal review or a philosophical debate. The author is neither a lawyer nor a philosopher. He is a Soldier with a vested interest in the betterment of an institution to which he has dedicated his life and the lives of his family. The author's curiosity concerning the killings peaked when a colleague of his, who had served as the chaplain for First Sergeant Hatley and his Soldiers during two different deployments to Iraq¹ teamed up with the author for ethics training. They used this incident as the foundation for their chaplain-led discussion of military ethics. The author decided then that, if provided the opportunity, he would research and write about the incident in an attempt to answer some nagging questions, the most antagonistic being: Why did a competent, experienced US Army first sergeant kill, and influence others to kill, four unarmed detainees, and were his decisions morally permissible? The author was provided such an opportunity a few years later, and this thesis is his attempt to answer those simple, yet exceedingly complex, questions.

The author wanted to know if First Sergeant Hatley killed those detainees because he was protecting his Soldiers and felt as though he had no other choice. The author wanted to know if First Sergeant Hatley was simply a fallible man who had succumbed to the pressures of a protracted conflict; who had collapsed beneath the weight of all of that death and destruction that accompanied it. For the author, the former question was much more honorable and maybe even morally permissible while the latter was, if nothing else, understandable. The author struggled, and will likely continue to struggle, with accepting the idea First Sergeant Hatley is simply a murderer. Perhaps the author's purpose taking on such a momentous topic stemmed from something more personal; something deeper within himself. It is possible the author wanted to know if he would act differently than First Sergeant Hatley given similar circumstances. This question, above all others, served as the emotional catalyst for the production of this thesis. In fact, this work is probably the product of two parts researching and one part soul searching. Although the author understood that his emotions would be his most important asset by which much of his effort would be fueled, he also understood that it was going to be a constant challenge to ensure it did not blur his vision and cloud his judgment as he searched for truth and understanding.

Background

In accordance with Court Martial Convening Order Number 2, United States versus Master Sergeant John Edmond Hatley, Colonel Jeffery Nance² called to order an Article 39(a) session at 0822, 13 April 2009, at Headquarters, 7th Army Joint Multinational Training Command, Rose Barracks, Vilseck, Germany. The court-martial closed at 1723, 15 April 2009, for deliberation and reconvened a little over three hours

later at 2049. The court martial panel found First Sergeant Hatley guilty of violation of Article 118 of the Uniform Code of Military Justice (UCMJ) in that he did, at or near Baghdad, Iraq, between on or about 10 March 2007 and 16 April 2007, with premeditation, murdered four male detainees of apparent Middle-Eastern descent by means of shooting them with firearms.³ At 1549, 16 April 2009, the court martial reconvened. Colonel Nance announced, “Master Sergeant John Edmond Hatley, this court martial sentences you to be reduced to the grade of E1; to forfeit all pay and allowances; to be confined for the length of your natural life with eligibility for parole; to be dishonorably discharged from the service.”⁴ The court-martial recessed at 1551, 16 April 2009. First Sergeant Hatley is currently serving out his sentence at the United States Disciplinary Barracks (USDB) at Fort Leavenworth, Kansas.

Problem Statement

Few would argue that ethics is not an important topic for all members of the profession of arms. It is not the purpose of this work to argue whether or not ethical decision making can be taught, for that discussion would certainly extend beyond its scope. It is, however, its purpose to demonstrate that ethics, from a philosophical perspective, can be studied, discussed, debated, and, sometimes, if enough genuine effort is put forth, used to regulate behavior when it where its regulation is significantly challenged. It is also the purpose of this work to explore that gray area between utilitarianism and absolutism; between survival and human rights.

Media reports of senior government officials and high ranking military leaders under investigation, relieved, and occasionally imprisoned for ethical violations seem to be an all-too-familiar occurrence of late. It is though one cannot pick up the newspaper,

log on to a computer, or click on the television without seeing an embarrassed face of a senior-level leader accompanied by a jaw-dropping headline. The two primary elements shared by so many of these incidents are that the ethical violations appear to have been impervious to rank and position and that nearly all of them stunned and severely disappointed those who had trusted them. Bill Briggs, writing for NBC News, reported that “Defense Secretary Leon Panetta on Thursday ordered the Pentagon to dig into and determine why an alarming number of generals and admirals have been snared by a variety of ethical lapses and misconduct allegations, headlined by the admitted marital infidelity of former four-star general and ex-CIA Director David Petraeus.”⁵ With this report and recent reports like it along with a relentless barrage of sexual misconduct spreading throughout the ranks, it has become exceedingly clear there is a need for continued ethical dialogue within the ranks of the US Armed Forces, among its members, junior and senior alike. This work will strive to positively contribute to such a dialogue.

Research Question

The question that underpins the following person-based ethical case study is: What caused an experienced, competent US Army First Sergeant, who apparently possessed unlimited potential, to kill, and influence others to kill, four unarmed detainees, and were his actions morally permissible? This work is divided into three primary sections, not including the administrative and supporting sections along with the conclusion. The first primary section provides a summary of the events leading up to the killings. The second section analyzes First Sergeant Hatley’s decisions and actions in an attempt to obtain situational understanding. The third section, and arguable the most important section, evaluates those decisions and actions within a philosophical context.

To which was previously alluded, this work is more interested in contributing to the ongoing PME dialogue than it is providing answers. That is, the answers are not as important as the search for them. The third section is the crux of the work as it will examine three factors contributing to First Sergeant Hatley's decision; (1) the strong psychological bonds that had probably formed between him and his Soldiers, (2) the professional responsibility and high expectations of a senior NCO, (3) and First Sergeant Hatley's inherent right to self-defense.

Definitions

Jacques Thiroux suggests that, "One of the worst possible moral offenses that a human being can commit is the taking of another human's life"⁶ It is the taking of a human life that is at the center of this discussion. Although this work will define and discuss topics such as murder, manslaughter, justifiable homicide, and other legal and social constructs, it will strive to extend beyond them and explore more deeply the meaning behind the killing of a person by another and if and when it is justifiable to do so.

In terms of ethical reasoning, there exist two extremes. At one end of the ethical continuum is absolutism, which claims there are absolute laws and rules that are independent of society and human interaction. At the opposite end of the continuum is relativism, which holds there exist no absolutes, and that right and wrong are dependent on the culture and society in which the behavior occurs. Somewhere between the two is utilitarianism,⁷ which suggests right and wrong is based on that which brings about the greatest good. Utilitarianism appears to ethically permit the killing of an unarmed person if that person presents a viable threat to another person. In other words, utilitarianism

seems to justify the killing of a person who “no longer recognizes the value of other people’s lives.”⁸

The ROEs for Soldiers deployed in support of contemporary combat operations in Iraq and Afghanistan prohibit them from killing unarmed combatants. In fact, this restriction, which is nearly universally accepted by host nation and coalition forces deployed to the previously identified operating environments, finds its roots in the just war tradition.⁹ ROE and other such procedures and regulations do not prohibit the killing of another human being, but rather describe when it is legally permissible. Although somewhat paradoxical, it is the immense value of human life that is at the heart of utilitarianism. In other words, human life is of the most value to mankind, and that the only time it can be taken is if it is being threatened by another. More time and space will be dedicated to this topic later.

Just war tradition, which directly contributes to just war theory, provides the conceptual framework for what is commonly accepted as the right and wrong way to fight a war. Just war theory deals with the major concepts by which the actions of military forces are evaluated,¹⁰ just war theory is also known as just war thinking, just war doctrine, or, as previously introduced, just war tradition. The term just war theory is most applicable to this thesis and will be used throughout.

Scope, Limitations, and Delimitations

There currently exists no substantial discussion within the ranks of the profession of arms concerning the cause and effect related to a senior US Army NCO’s decision to kill, and influence others to kill, four unarmed detainees. In addition, there exists no useful examination of this event within the context of PME. Although tragic, high profile

incidents like this one and ones preceding it such as the My Lai Massacre in 1968, the Abu Ghraib Prison abuse scandal in 2006, and the Sassaman drowning in 2004, provide rich and fertile academic soil from which to grow potentially productive PME discussions.

This people-based case study will examine the incident through an ethical lens, focusing specifically on First Sergeant Hatley's decisions as they apply to ethical decision making by US Army leaders. As previously discussed, the question this work will attempt to answer is why did a competent, experienced US Army senior NCO kill and influence others to kill, four unarmed detainees, and was his decision morally permissible?

It is not the purpose of this work to legally or morally defend, prosecute, or otherwise unnecessarily judge First Sergeant Hatley, although a tendency to do so will likely be ever-present throughout. The research conducted and the information collected and presented in support of this project has been done so for the implicit purpose of attempting to answer the previously identified question. A secondary and more personal reason for what is contained herein is the hope of possibly extrapolating an inkling of good from an otherwise tragic event.

Assumptions

The primary assumption that will serve as the foundation for this work is that there is more to First Sergeant Hatley and his decisions than simply a bad man murdering innocent people, and that a contextual examination of his decisions and actions has the potential of being valuable to the ongoing PME dialogue. In fact, it will be suggested that

perhaps First Sergeant Hatley was a good man, and because of his goodness, he did a bad thing.

Limitations

The primary and most obvious limitation over which the author has no control is that it is impossible to know for certain what were First Sergeant Hatley's motives, intent, and purpose for killing, and influencing others to kill, four unarmed detainees. There will be a number of assumptions made concerning the mental and emotional state of First Sergeant Hatley throughout this thesis, and these assumptions, by their very nature, can significantly limit its ability to discover absolute truth. An additional limitation of this work is that is fundamentally a work of philosophy that depends on the reader finding a balance between incorporating and excluding any number of cultural, social, and religious factors that can enhance or hinder the productiveness of the work.

Delimitations

Because this thesis is limited in time and space, the boundaries that have been established are the contemporary US military operating environment, its leadership, specifically the leadership of the US Army, and just war theory. An inclusionary delimitation is the examination of First Sergeant Hatley's ethical decision making in Iraq in 2007. An exclusionary delimitation is a more exhaustive and comprehensive examination of just war theory and moral philosophy.

¹Chaplain Seth George was First Sergeant Hatley's chaplain at the time of the killings. Chaplain George also testified in the courts martial of all three of the NCOs convicted of the murders.

²Military Judge (MJ).

³Department of Defense Form (DD) 485, May 2000, Charge Sheet, United States Army, General Court Martial Record of Trial, United States v. Master Sergeant John Edmond Hatley (7th Army Joint Multinational Training Command, Rose Barracks, Vilseck, Germany, 2009).

⁴*Ibid.*, 1337.

⁵Bill Briggs, “Panetta orders review of ethical standards amid allegations of misconduct among high-level military leaders,” *NBC News*, 15 November 2012, http://usnews.nbcnews.com/_news/2012/11/15/15166642-panetta-orders-review-of-ethical-standards-amid-allegations-of-misconduct-among-high-level-military-leaders?lite (accessed 7 May 2013).

⁶Jacques Thiroux, *Ethics: Theory and Practice*, 7th ed. (New Jersey: Prentice Hall, 2001), 182.

⁷Louis Pojman and James Fieser, *Ethics, Discovering Right and Wrong*, 7th ed. (Boston: Wadsworth Cengage Learning, 2012), 2.

⁸Thiroux, *Ethics: Theory and Practice*, 187.

⁹*Ibid.*, 133.

¹⁰Bill Rhodes, *An Introduction to Military Ethics: A Reference Handbook, Contemporary Military, Strategic, and Security Issues* (Santa Barbara, CA: Praeger Security International, 2009), 23.

CHAPTER 2

LITERATURE REVIEW

The patterns in the literature reviewed in support for this thesis are related to the theme of PME and the contemporary operating environment in which First Sergeant Hatley and his Soldiers were required to operate. Some of the literature consists of academic texts while others are firsthand accounts of incidents. A few of the works helped provide an accurate, detailed picture of the 2007 Iraq environment. Some of the works helped establish a moral philosophy basis through which to discuss PME. The most important texts referenced were the official court martial transcripts for the three NCOs involved in the killings.

Thomas Ricks' *Fiasco: The American Military Adventure in Iraq*¹ provided a candid perspective of the contemporary operating environment in which First Sergeant Hatley and his Soldiers operated. *Fiasco* reveals some of the political and military blunders at the strategic level of war that ultimately set the conditions for the tenuous and often insurmountable operations on the ground at the tactical level. It is what this book provides concerning the Bush Administration's surge of military personnel in 2007 that is most valuable as it draws a direct correlation between how the decisions being made at the political level set the conditions in which First Sergeant Hatley and his Soldiers were required to operate. Ricks' *Fiasco* contains a wealth of primary Iraq sources, some specifically in the area of the 2007 surge.

*The Warrior King: The Triumph and Betrayal of an American Commander in Iraq*² is a memoir of a combat commander's experiences in the Sunni Triangle in Iraq in 2004 and 2005. Sassaman discusses the factors contributing to his decision to cover up

the drowning of an Iraqi for which his Soldiers were charged and convicted. Sassaman's work was particularly useful for this thesis as it not only provided a unique perspective of the challenging conditions in which Sassaman's Soldiers were required to operate, but also the mindset and ethical decision making of many US Forces during counter insurgency operations in Iraq. *The Warrior King* is a valuable source of firsthand information from a senior leader on the ground in Iraq whose decision making process was influenced by some of the same factors to which First Sergeant Hatley was subjected.

Vivian and Deborah Gembara's *Drowning in the Desert: A JAG's Search for Justice in Iraq*³ is a book written by a US Army lawyer who prosecuted the case of a Soldier accused of murdering an Iraqi in 2004. This book is another account of the incident discussed in *The Warrior King* from the perspective of a lawyer rather than a commander. This book, like *The Warrior King*, provides valuable information concerning the conditions and perspectives that existed at the time and in the location where First Sergeant Hatley and his Soldiers operated.

Pojman and Fieser's *Ethics: Discovering Right and Wrong*⁴ is an academic study of ethics from a classical approach. It provides a comprehensive overview of the fundamentals of ethical theory and moral philosophy that supports this thesis.

Another foundational text that is used to guide this thesis is Brian Orend's *The Morality of War*.⁵ This book consists of a comprehensive examination of just war theory as it applies to the contemporary military operating environment. Similar to Pojman and Fieser's *Ethics: Discovering Right and Wrong*, this one provides a significant amount of breadth and depth concerning the just war tradition. *The Morality of War* traces the

evolution of military operations in order to gain a unique, informed perspective of the contemporary operating environment and the impact it has on just war thinking.

Bill Rhodes' *An Introduction to Military Ethics: A Reference Handbook, Contemporary Military, Strategic, and Security Issues*⁶ is another academic text that provides a foundation on which this work bases its discussions of military ethics. As did *The Morality of War* and *Ethics: Discovering Right and Wrong*, Rhodes' book focuses the history and legacy of just war theory and its historical application by which this thesis will evaluate First Sergeant Hatley's decisions and actions. The most valuable aspect of this book is the way in which it discusses terrorism by non-state actors and how entities impact the traditional view of just war theory and its implications for future thinking concerning this topic.

*Just and Unjust Wars: A Moral Argument with Historical Illustrations*⁷ by Michael Walzer is a comprehensive examination of the just war tradition through an analysis of historical illustrations from the Athenian attack on Melos to the My Lai Massacre to the war in Iraq. There are two sections of *Just and Unjust Wars* that contribute significantly to this particular thesis. The first is its treatment of anticipatory self-defense, and the second is the section on the nature of necessity, both of which helped more effectively frame First Sergeant Hatley's actions within the framework of just war theory.

Copies of the official court martial transcripts for First Sergeant Hatley, Sergeant First Class Mayo, and Sergeant Leahy were very useful in constructing the scenario this thesis evaluates. The official testimony and evidence allowed the author to present the most accurate account of what was going on leading up to that day next to the canal. The

transcripts allow the reader to visualize the actions as they unfolded and subsequently make more informed assumptions.

A number of state, local, and independent newspapers, magazines, and journals were reviewed in order to gain a clearer picture of the external factors that may or may not have contributed to First Sergeant Hatley's decisions and actions. Due to the contentious nature of the War in Iraq and the declining public support for it, the more editorial accounts and commentaries that could be reviewed in preparation for this thesis, the more likely the facts surrounding the case could be accurately discovered and subsequently discussed. It is the news publications that revealed the need for a thesis like this one; a thesis that digs deeper and strives to more clearly reveal the complex nature of the war in Iraq and the unique, often deadly, circumstances in which First Sergeant Hatley and his Soldiers were required to operate.

Field Manual (FM) 27-10, *The Law of Land Warfare*, mandates that the "conduct of armed hostilities on land is regulated by the law of land warfare which is both written and unwritten."⁸ This official US Army publication states its purpose as being too "diminish the evils of war by protecting both combatants and noncombatants from unnecessary suffering, safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly POWs, the wounded and sick, and civilians' and facilitating the restoration of peace."⁹ It accurately describes the prohibition against murder, mutilation, cruel treatment, torture, and the taking of hostages. It also describes the prohibition against humiliating and degrading treatment of POWs as well as judging and sentencing them without a fair trial.¹⁰ FM 27-10 defines the standards by which US Forces will treat detainees, thus providing the regulatory foundation for this thesis by

providing the standards by which First Sergeant Hatley and his Soldiers were required to perform their duties in Iraq as well as by which they were judged.

¹Thomas Ricks, *Fiasco: The American Military Adventure in Iraq* (New York: Penguin Group Inc., 2007), 22.

²Nathan Sassaman, *The Warrior King: The Triumph and Betrayal of an American Commander in Iraq* (New York: St. Martin's Press, 2008), 34.

³Vivian Gembara and Deborah Gembara, *Drowning in the Desert: A JAG's Search for Justice in Iraq* (Minneapolis: Zenith Press, 2008), 56.

⁴Pojman and Fieser, *Ethics: Discovering Right and Wrong*, 45.

⁵Brian Orend, *The Morality of War* (Canada: Broadview Press, 2006), 75.

⁶Rhodes, *An Introduction to Military Ethics*, 78.

⁷Michael Walzer, *Just and Unjust Wars: A Moral Argument* (Jackson TN: Basic Books, 2006), 55.

⁸Headquarters, Department of the Army, Field Manual (FM) 27-10, *The Law of Landwarfare* (Washington, DC: Government Printing Office, 2011), 23.

⁹*Ibid.*, A-1.

¹⁰Geneva Convention, 1949.

CHAPTER 3

METHODOLOGY

Everything in war is very simple, but the simplest thing is difficult. The difficulties accumulate by producing a kind of friction that is inconceivable unless one has experienced war. . . . Countless minor incidents—the kind you can never really foresee—combine to lower the general level of performance, so that one always falls far short of the intended goal.

— Carl von Clausewitz, *On War*

This people-based case study will examine the Soldiers, systems, circumstances, and moral philosophy that potentially contributed to First Sergeant Hatley's decision to kill, and influence others to kill, four unarmed detainees southwest of Baghdad, Iraq in the spring of 2007. The intent of this study is to try and answer the questions: why did a highly qualified and experienced US Army first sergeant commit such egregious acts? The purpose of this work is not so much to answer the question but rather attempt to more clearly understand it.

The data collected in support this thesis consists of, but was not limited to, interviews, literature, and legal documents,¹ specifically in the area of PME. This holistic examination of the potential factors influencing First Sergeant Hatley's decisions and actions is intended to contribute to the ongoing discussion of PME within the US Army and among its Soldiers and its leaders. This examination and subsequent discussion will provide the reader with an opportunity to analyze, discuss, and, perhaps conduct some personal exploration of his or her own moral philosophy within the context of the greater military community.

There has been little written about the canal killings and nothing of substance contributing to PME. That which has been written primarily consists of brief newspaper

and journal articles along with some television programs. The most useful and credible sources of information concerning what actually took place that day south-west of Baghdad have been derived from court records and legal documents. Although not a legal study, these documents have proven useful in developing a factual landscape on which to conduct the subsequent PME discussion.

This work will strive to accomplish more than simply describing what happened. It will evaluate and analyze the decisions and actions of First Sergeant Hatley from a PME perspective for the purpose previously identified. This thesis is divided into three primary sections, not including supporting sections and a conclusion. The first section provides a summary of the events leading up to and during the killing of four unarmed detainees. The second section evaluates First Sergeant Hatley's actions and decisions, some of which will attempt to be from his point of view. The third section will evaluate those decisions and actions according to contemporary moral philosophy and PME.

What must also transcend the breadth and depth of this work is what its purpose is not. This work is not intended to judge, prosecute, nor convict First Sergeant Hatley. A US Army court martial has already done that. This work is not intended to punish First Sergeant Hatley. The USDB at Fort Leavenworth, Kansas is currently doing that. It is definitely not the purpose of this work to vilify, condemn, or otherwise dehumanize First Sergeant Hatley. He may be doing all of those to himself. This work will, in fact, acknowledge First Sergeant Hatley's years of faithful service to the US Army and his country, many of which were performed during combat operations. As mentioned in the preface to this work, a secondary objective is to take an otherwise tragic event and perhaps derive some inkling of good from it. The research conducted in support of this

work is exclusively for the purpose of facilitating scholarly and academic discussions concerning morally obligatory or permissible behavior. It is up to the reader on how to evaluate, internalize, and judge First Sergeant Hatley's decisions and actions. This thesis is intended to provide just such an opportunity.

Design

The design of this research project is exploratory rather than explanatory. In other words, it is the journey more than the destination that is of the greatest value for the reader. This thesis has been constructed in such a way as to provide an opportunity for the reader to allegorically don a US Army uniform and pin on first sergeant stripes and body armor and assume the responsibility for the training, safety, and welfare of American Soldiers. The reader can deploy with those Soldiers to one of the most abstruse and dangerous combat zones since the Vietnam conflict. The reader can patrol the streets of Baghdad. The reader will be provided the opportunity to become engaged by lethal bombs and bullets that often seem to have no point of origin. The reader can witness the death of Soldiers; young Soldiers between whom there exists strong psychological and emotional bonds. The reader will also be provided an opportunity to attempt to transform Soldiers into policemen and apprehend and catch and release an enemy that really is more armed combatant² than an organized military force. The reader is provided an opportunity to ask a question that is at the very center of this case study: What would I have done? The answer to this question will not only initiate and facilitate engagement in a PME discussion, it can, potentially, allow the reader an opportunity for deep, sometimes dark, personal self-reflection.

It is at this point in the work that the reader must make a decision. Perhaps the reader who is quick to rush to judgments from an armchair Monday morning with little or no tangible review of the facts surrounding the situation or the context in which it occurred might consider stopping here. Perhaps it is the academic-minded professional interested in, and committed to, a more comprehensive understanding of ethical behavior during a time of war who will continue. Both of these readers are the intended audiences for this work, but perhaps more so the former than the latter.

Although this work is relatively clear in its understanding of what First Sergeant Hatley did, it is not so confident in its understanding of why he did it. Several theories concerning what contributed to First Sergeant Hatley's decision to kill, and influence others to kill, four unarmed detainees will be explored. The design of this work, and the research supporting it, is for the purpose of evaluating, internalizing, and discussing the ethical permissibility of First Sergeant Hatley's decisions and actions. The discussion will contain many facets, while the ultimate determination will be up to the individual reader. As was previously stated, the design of this thesis is not necessarily intended to provide answers, but rather to facilitate dialogue related to PME.

First Sergeant Hatley

Aside from the four counts of premeditated murder, First Sergeant Hatley's professional military record is immaculate. A brief review of his official military personnel file (OMPF) reveals a professional Soldier who was repeatedly recognized for meritorious service. There is no reason to assume First Sergeant Hatley would not have soon been promoted above his peers to the rank of sergeant major and elevated to the highest levels of the US Army. About the same time murder charges were being filed

against him, First Sergeant Hatley was selected for promotion to Sergeant major.³ First Sergeant Hatley's civilian defense attorney (CDA) told the court martial panel during his opening remarks that, "John Hatley has been in the US Army almost 20 years. He's done just about everything an infantry first sergeant can do. He was selected in August of 2008, while this investigation was going on, to attend the Sergeants Major Academy."⁴ In fact, it is safe to assume that First Sergeant Hatley would have become Command Sergeant Major Hatley and serve as a brigade, division, or corps sergeant major rather than Private Hatley serving a life sentence at the USDB at Fort Leavenworth, Kansas.

It is clear that prior to the killings, First Sergeant Hatley was an effective NCO with unlimited potential, highly regarded by his subordinates, peers, and superiors. He was a leader who, according to many of his senior leaders, exemplified the Army Values and the NCO creed. Soldiers like First Sergeant Hatley are often unofficially referred to as fast trackers.⁵ Baghdad Iraq in 2007, First Sergeant Hatley was the senior NCO of Alpha Company, 1st Battalion, 18th Infantry Regiment (A 1-18); 2nd Brigade Combat Team (2BCT)—Dagger Brigade—of the First Infantry Division. There was a commissioned officer who commanded the company, but it was First Sergeant Hatley who was responsible for its day-to-day activities. It was First Sergeant Hatley who was the backbone of the organization, and it was a particularly strong backbone.

First Sergeant Hatley was born 30 July 1968 in Decatur, Texas to Darryl and Ann Hatley. He was the oldest of five children, and his inclination for caring for others began to manifest itself early as he assumed some of the responsibility of looking after his siblings. First Sergeant Hatley attended Groesbeck High School in Groesbeck, Texas, but he was unable to resist his attraction to military service, so in October of 1989,⁶ he

dropped out and enlisted in the US Army. He attended basic training and advanced initial training (AIT) at Fort Benning, Georgia, and prior to graduation, he was promoted to Private First Class (PFC), and it was there and that his Army career began.



Figure 1. Photo of First Sergeant John Edmond Hatley

Source: Free John Hatley Website, <http://www.freejohnhatley.com> (accessed 20 December 2012).

First Sergeant Hatley was first assigned to the 101st Airborne Division (Air Assault) and immediately deployed with that unit in support of Operations Desert Shield and Desert Storm.⁷ In 1997, First Sergeant Hatley was assigned to the 5th Cavalry Regiment, and he again deployed, this time to Operation Joint Forge in Bosnia and Herzegovina.⁸ First Sergeant Hatley deployed once again in 2001, this time to the Balkans in support of Operation Joint Guardian in Kosovo.⁹ The first of First Sergeant Hatley's two deployments to Iraq came in 2004 where he worked in the 1st

Infantry Division's Operations section. His second deployment was as the first sergeant of Alpha Company of the Dagger Brigade.¹⁰

According to the US Army, First Sergeant Hatley was highly trained and qualified. He attended and graduated from every professional educational requirement, exceeding the standard in nearly all of them. He was the honor graduate for the Basic Noncommissioned Officer Course (BNCOC) and made the commandant's list at the Advanced Noncommissioned Officer Course (ANOC). He also successfully completed the US Army Ranger School, Airborne School, Air Assault School, and the Bradley Master Gunner School. First Sergeant Hatley was awarded the Henry Caro Leadership Award, inducted into the Sergeant Audie Murphy Club, was the recipient of the Order of Saint Maurice, and was a certified combatives instructor. First Sergeant Hatley was awarded numerous awards and citations to include two Bronze Star Medals, two Meritorious Service Medals, and an Army Commendation Medal for Valor. First Sergeant Hatley also earned two Combat Infantryman Badges (CIB), the Expert Infantryman Badge (EIB), the Parachutist Badge, the Air Assault Badge, and the expert Rifle Marksmanship Badge.

According to First Sergeant Hatley's official military record, specifically his evaluation reports, he had performed his duties as a Soldier in an exemplary manner. He had checked all the boxes and stepped on every step of the ladder. His performance far exceeded his commanders' expectations and the performance of most of his peers. There is little doubt why the US Army promoted him to first sergeant and allowed him to lead Soldiers in combat, and there is less doubt why the US Army selected him for promotion to sergeant major.

¹Although this study will depend on legal documentation to help accurately examine the events related to the murders, it is not the intent of this work to serve as a legal review or in any way determine legal guilt or innocence. This work will consider the court martial rulings as dispositive from a legal standpoint and useful in helping answer the ethical questions identified herein.

²An unlawful combatant or unprivileged combatant is a non-state entity who directly participates in armed conflict in violation of International Humanitarian Law (IHL).

³Human Resources Command (HRC), US Army Sergeant Major Selections, released 19 August 2008.

⁴General Court Martial Record of Trial, United States v. Master Sergeant John Edmond Hatley, Trial Transcripts, 7th Army Joint Multinational Training Command, Rose Barracks, Vilseck, Germany, 2009, 449.

⁵Origin of reference unknown.

⁶First Sergeant Hatley later obtained his GED.

⁷The Gulf War (2 August 1990-28 February 1991). The official operation name is Operation Desert Storm (17 January 1991-28 February 1991).

⁸Operation Joint Forge in Bosnia and Herzegovina (1995-2004). Bosnian War (1992-1995).

⁹Kosovo Force (KFOR) is an ongoing NATO-led international peacekeeping force responsible for establishing a secure environment in Kosovo (11 June 1999-Present).

¹⁰Earl Glynn, "Leavenworth 10" families tell their stories, Kansas Watchdog.org, 5 September 2010, <http://watchdog.org/36778/ks-leavenworth-10-families-tell-their-stories/> (accessed 27 May 2013).

CHAPTER 4

THE INCIDENT

The following account has been derived primarily from the official court martial transcripts of First Sergeant John Edmond Hatley, Staff Sergeant Joseph P. Mayo, and Sergeant Michael Patrick Leahy. Some of the secondary sources used are oral interviews, criminal investigation evidence, and other government documents. The purpose of this section is to provide a synopsis of the events leading up to First Sergeant Hatley's decision to kill four unarmed detainees.

The Killings

In March of 2007, combat outpost (COP) Angry Dragon,¹ on the corner of Routes Vernon and Steelers,² was home for First Sergeant Hatley, the Alpha Company Headquarters (HQ) Company, and Second Platoon of, 1st Battalion, 18th Infantry Regiment, 1st Infantry Division. It was not, however, much of a home. It was a place to rest, exercise, eat, and prepare for the next mission. It was a place where birthdays, anniversaries, and holidays were celebrated, and it was a place where fallen comrades were memorialized. It was a place where jokes were told, tears fell, and young American Soldiers grew closer as an army unit and, in many ways, a family, but it was not much of a home.

Sergeant Leahy testified during First Sergeant Hatley's court martial that, "The COP [Angry Dragon] is set up in a square-type format. It had four buildings. Two of the buildings were two-story buildings, and two of the buildings were one-story. The one-story between the two double-story buildings was-it was our TOC [tactical operations

center] and our Aid Station. It was concrete. We had a staging area for the vehicles outside the first wall; it was a dirt area. It was a COP that we had built up, basically, from scratch. The other half of that compound was owned by the Iraqi Army, and they occupied that.”³ The buildings were the Soldiers’ houses, the interior perimeter was their neighborhood, and their fellow Soldiers were their neighbors.

Outside the outpost was danger; the ever-present threat of death. Over the HESCO barriers and through the wire was an enemy waiting for them; an elusive enemy who wore no uniform and hoisted no flag; an enemy who hid among the citizens and within the neighborhoods and towns; an enemy who really was not an enemy at all, but rather armed criminals who operated with little fear of significant consequences.

According to eyewitness testimony, West Rashid in the southwestern corner of Baghdad felt like the Wild West, complete with armed robbery and shoot outs in the streets.

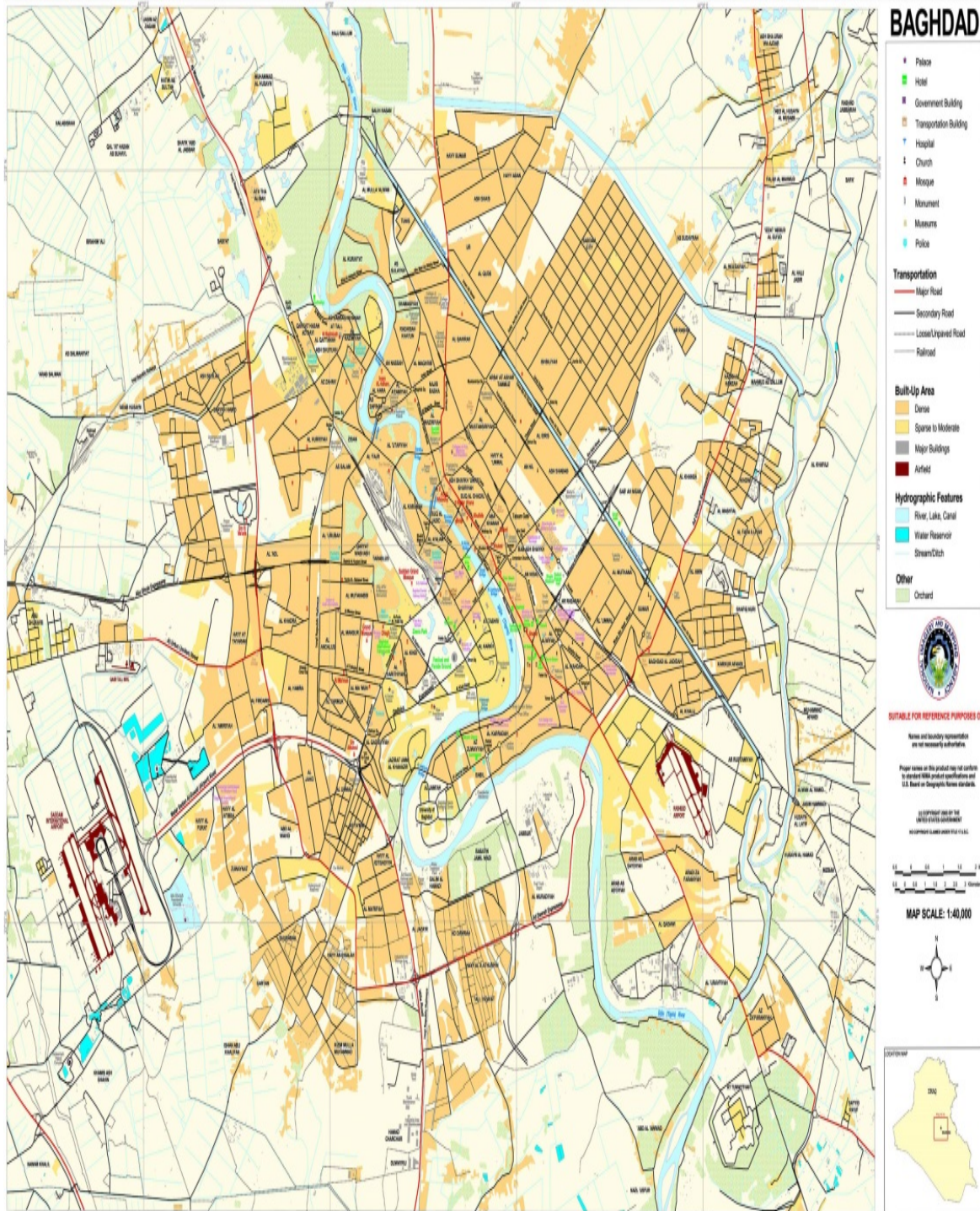


Figure 2. Map of Baghdad, Iraq

Source: United States Government, National Imagery and Mapping Agency, <http://www.cemml.colostate.edu/cultural/09476/images/iraq05-008-bagdmaplarge.jpg> (accessed 13 May 2013).

Alpha Company was sent from Forward Operating Base (FOB) Falcon to COP Angry Dragon in late February 2007. With the initiation of the surge in March, Soldiers from the Dagger Brigade came in, and Alpha Company was split with its headquarters (HQ) section and its Second Platoon remaining at COP Angry Dragon while the rest of the company returned to FOB Falcon and associated FOBs and COPs within the Brigade's Area of Operation (AO). Chaplain Seth George testified as a character witness during the sentencing phase of First Sergeant Hatley's court martial. "So they had them [First Sergeant Hatley, the HQ, and Second Platoon] down in the rural sector, down in Ellis. Site 14, and then up at TAC, up near checkpoint 542 and 543. It was a large area and they had to span all of it. Because Hatley, running the headquarters, he had to go through all of the hotspots; Arrows, Cedars, Steelers, to look after Alpha Company who was covering down on it—essentially that whole western sector."⁴ Sergeant Leahy testified, "Originally, the whole company moved out there [COP Angry Dragon], but we were split up, at the time, from our original Alpha Company. We only had one platoon that was there, and we had two attachment platoons with us."⁵ When the company was split, First Sergeant Hatley remained with the HQ Company and Second Platoon in order to provide additional leadership and oversight of an already tired and thinly stretched unit.⁶

At an undetermined day in late March, a patrol, consisting of Soldiers from Alpha Company's Second Platoon and some Soldiers from 1st Battalion, 28th Infantry Regiment (1-28), 1st Infantry Division (1ID)⁷ under the operational control of Alpha Company leadership exited COP Angry Dragon sometime between nine and eleven in the morning. First Sergeant Hatley accompanied the patrol, and although he was not

technically in charge, every Soldier present certainly understood that nothing was going to happen during that patrol that was not agreeable to First Sergeant Hatley.

According to official testimony from Sergeant First Class Mayo and Sergeant Leahy, the patrol consisted of two Bradleys⁸ and three HMMWVs. First Sergeant Hatley, Sergeant Leahy, who was the Company senior line medic, Private First Class Ribordy, who was the driver, and Specialist Ramos, the gunner, were in the first Bradley. In the second Bradley was Sergeant First Class Mayo, who was the Second Platoon Sergeant and the second senior NCO on the patrol. In the back of the second Bradley was Staff Sergeant Cunningham, the patrol leader, along with some junior enlisted Soldiers. Sergeant Cunningham was the leader of this particular patrol because the more senior Sergeant First Class Mayo was preparing to take mid-tour leave, and the two were conducting a left-seat-right-seat ride.⁹ Sergeant Ribordy was the Bradley commander. Sergeant Quigley was the dismount commander. Specialist Hartson was one of the dismount Soldiers. There was also one interpreter assigned to the patrol, who rode with the patrol leader in the second Bradley.

The purpose of the patrol was to simply become more familiar with the new sector since Alpha Company was split. Sergeant Leahy testified that, “It was a sector that was fairly new to us. Since we had split up, we had re-did the sectors we were in charge of, so it was still fairly new. We were just going out there, seeing what was going on, making contact with the local nationals, and area familiarization.”¹⁰

Almost immediately after exiting the COP gate, the Soldiers on patrol heard small arms fire. Most of them had been shot at enough to know the shots were not directed at them, but they were nonetheless required to investigate their origin. Like a mouse

searching for cheese in a maze, the patrol moved quickly along congested streets, through tight alleyways, and into and across empty dirt lots in search of the gunfire. “Every time that we seemed to go down the street where we thought it was coming from, the gunfire seemed to come from a different direction, so we were just weaving in and out of the Mohallah¹¹ attempting to find out where the gunfire was coming from.”¹²

The lead Bradley eventually spotted two men running with weapons. Sergeant First Class Mayo testified that, “The lead vehicle, which was a Bradley, called up that they’ve seen two personnel with AK-47s, with weapons, and they’re running to a building. Once they led north of that building, we established security around that building, and then we started to clear the building.”¹³ The building was an unfinished structure that appeared to be abandoned. Sergeant Leahy testified that, “It was a house that looked like it was being built, but had not been finished being built at that time.”¹⁴

Sergeant Quigley and his Soldiers quickly dismounted, moved to the building the men were seen entering, and cleared it. “They were just in the house, just kind of standing there, when we came up to them.”¹⁵ First Sergeant Hatley and his Soldiers believed the men chose not to resist because they knew they would simply be released from the detainee holding area (DHA) within days of their detention and incarceration. Sergeant Leahy testified that “the first sergeant [First Sergeant Hatley], Sergeant First Class Mayo, the interpreter, and—those are the only ones I know was there—they started tactically questioning these guys, trying to find out why they were running; why they had the flak vest and grenades. We were there for—it seemed like a while-hour, hour-and-a-half while these guys were tactically questioned.”¹⁶ The two men claimed they were fleeing their home after it had been invaded by four armed men. After the questioning,

Sergeant Quigley's dismount Soldiers loaded the two men into the back of one of the Bradleys, and, according to Sergeant Leahy "we were going to go to their original house to find out what the situation was there because their house had been taken by bad guys—or they said it was—so we were going to go find out the situation and see what we could do about it. As soon as we got these guys into our HMMWVs, we started taking small arms fire directly at us. A fire team, including myself, Sergeant First Class Mayo, and First Sergeant went to the roof of the tallest building, which was a building to the left of the HMMWVs. We went up to the roof of it to identify where the shooting was coming from."¹⁷ As soon as First Sergeant Hatley and the fire team positively identified the origins of the shots, they loaded back into the vehicles and moved quickly toward that location, which was a building a couple blocks away.

The building was abandoned. It was a structure architecturally common to the Baghdad area, consisting of a row of garages with retractable doors, padlocks, and metal hinges. The building appeared as though it was designed to be used as a storefront market that could be open and from which goods could be displayed and sold and closed to secure the goods when not being sold. The shop doors were closed and the small apartments above them appeared to be abandoned when First Sergeant Hatley and his Soldiers arrived.

The Soldiers stopped and dismounted again. They entered the building as they had been trained; as they had done so many times before; dynamically with speed and mutual support. They moved quickly to its right side to a break in the wall and then across a small dirt courtyard and immediately up a single flight of external steps leading to the apartments. With their weapons at the ready, the dismount Soldiers entered one of

the apartments, and inside they found four adult males and some women and children. Two of the Soldiers escorted the women and children to the nearby courtyard and guarded them while the rest of the Soldiers secured the four men and searched the apartment. The search turned up an AK-47 inside the apartment and a bag of 7.62 ammunition under the stairs leading up to the apartment. Assuming they possessed enough probable cause to do so, First Sergeant Hatley gave the order to cut the locks off the storefront doors. Inside the Soldiers found a small cache of military style equipment consisting of four rifles, some binoculars, and an old flak vest. Sergeant Leahy testified that, “At this time all the stores were—all the locks were cut, and the stores were opened—the garage door-type things. In one of them—it was either the last one or second-to-the-last store-type thing, there was a weapons cache.”¹⁸ Sergeant Leahy also testified that, “There was bags of them. There was rounds for-the linked rounds for the PKC—I believe it’s a 7.62-and AK rounds. There was a bunch of those some with the magazines filled; some just the rounds thrown into like a canvas-type bag.”¹⁹ Sergeant Leahy explained that. “Once we found all the rest of the contraband, then we started to zip-strip them [the four detainees] and questioned them.”²⁰

The Soldiers took some action to positively identify the four detainees. “They [two original detainees] were brought out-well, first, we took—it was an Ace bandage, and I rolled them very thin so that only the eyes of a person would be covered, and of the four male detainees we had now, we wrapped their blindfolds up so only, basically, that their eyes were covered at the time. We took the two original Iraqis that we had in our vehicles, we brought them out, they were asked to identify-if these were the guys that, you know, overtook their house, and they were identified by those guys as being bad

guys.”²¹ Sergeant Hatley and his Soldiers considered the testimony of the original two men they had detained as positive identification and cause for detaining the other four. Sergeant Leahy switched the ace bandages with the thicker cravats²² and helped load the four detainees into one of the Bradleys. The original two detainees were released after it was confirmed they had been the legal residents of the house and that their story that they were fleeing from other four armed men checked out. The Soldiers confiscated the weapons and equipment. “So we loaded up all the weapons and contraband items that were in this store, and then we all loaded into our vehicles and headed to the detainee detention facility.”²³

The Trial Counsel asked Sergeant Leahy, “Did you actually go to the detention facility?” Sergeant Leahy answered, “No, sir.” The Trial Counsel then asked, “Where did you go?” Sergeant Leahy answered, “Well. First Sergeant [Hatley] had gotten a call on the radio. I don’t know what was said; he got very angry at the call. I remember him slamming the mic down, swearing, and we were right near the COP at this time, and so we just pulled straight into the COP.”²⁴

First Sergeant Hatley’s men were tired, not so much because of the long, hot days, although there were many; not so much because of the danger, the bullets and bombs, although there were many of them; not so much because of the death and destruction, although it was all around them. The process of getting shot at, positively identifying enemy combatants, carefully investigating the crime scene, collecting evidence, taking sworn statements from eye-witnesses, apprehending, detaining, and transporting detainees, and turning them into the DHA was cyclic. Sergeant Leahy testified that, “Seems like even if you’re do your job and take these guys to the detainee center, they

just come right back. They're the same [expletive] guys shooting' at you.”²⁵ In a letter written to CNN after his conviction and incarceration, First Sergeant Hatley expressed his frustration with the process. “An additional insult is that the units that capture these individuals are the same ones responsible to pick them up and release them. We've repeatedly found ourselves fighting the same enemy again and again.”²⁶ First Sergeant Hatley also suggested the enemy exploited this admittedly flawed detainee system, thus increasing the danger to his Soldiers exponentially. First Sergeant Hatley's concerns were shared by other Iraq veterans. “The repeated release of insurgents back onto the streets endangers civilians, puts Iraqi and foreign troops at higher risk and, most ominously, threatens to perpetuate and further expand the violence that has ravaged the Persian Gulf nation, according to defense officials and security experts. ‘We keep releasing them and we fight the same guys over and over again,’ one US military official, speaking on condition of anonymity, told Inside the Pentagon last week. ‘It's negligent. It's culpable negligence.’”²⁷ On an undisclosed date in March of 2007, this cycle of catch and release was broken.

When First Sergeant Hatley and his Soldiers arrived back at COP Angry Dragon, First Sergeant Hatley climbed out of his Bradley and hurried into the tactical operations cell (TOC). The rest of the Soldiers shut down their vehicles, dismounted, and took a break within the safety of the COP. Some of the Soldiers went to the clearing barrels for a smoke.

First Sergeant Hatley emerged from the TOC a few minutes later. Sergeant First Class Mayo testified that First Sergeant Hatley told him at that time, “Hey, they're not tracking that we have these guys.”²⁸ According to testimony from Sergeant Leahy, First

Sergeant Hatley told the Soldiers, “We’re going to be going back out, so turn the vehicles around.”²⁹ When the trial counsel asked Sergeant Leahy why he believed First Sergeant Hatley was ordering the Soldiers back out, Sergeant Leahy answered, “Sir, one of the first things that popped into my head was we were going to go out and kill these guys. Also, I thought it was possible we were going to go—either go drop them off in another sector, maybe beat the crap out of them—something along those lines.”³⁰

Sergeant First Class Mayo testified that First Sergeant Hatley said, “Hey, you know that if we take these guys in, if we drop them off at the DHA—the Detainee Holding Area—if we drop them off, they’re just going to be back on the street in a few weeks. We want to go take care of them. Do you have any problems with that?”³¹

The trial counsel asked Sergeant Leahy, “What did you take it to mean when he said “take care of them?” After the judge overruled the Civilian Defense Counsel’s objection, Sergeant Leahy answered the question with, “To kill them.” The trial counsel asked him, “How’d that make you feel?” Sergeant Leahy answered, “They were bad guys. I was okay with it.”³² The Trial Counsel asked Sergeant First Class Mayo the same question. Sergeant First Class Mayo answered, “To kill them, sir.” The Trial Counsel asked Sergeant First Class Mayo, “What was your response?” and Sergeant First Class Mayo answered, “That I didn’t have any issues, sir.”³³

First Sergeant Hatley asked some of the NCOs if they had a problem with what he referred to as taking care of the detainees, and when none of them objected, the Soldiers did as they were ordered and got into their vehicles and again exited COP Angry Dragon for the second time that day. This time they only took one Bradley; the one with the four

detainees in it. The 1-28 Soldiers, the other Bradley, and the interpreter were left back at the COP.

After exiting COP Angry Dragon, the patrol headed west along Route Steelers, then south on Route Cedar into Hamdani Village. The Trial Counsel asked, “Did you know where you were going?” Sergeant First Class Mayo answered, “We had a general location, yes.” The Trial Counsel asked, “All right. What was that general location?” Sergeant First Class Mayo answered. “It was the canal, sir.”³⁴

The patrol maneuvered slowly through a narrow break in a wall and then onto the road that ran directly into the canal. When the Soldier arrived at the canal near Hamdani Village, they established a security perimeter around the vehicles, and in the center of it, First Sergeant Hatley met with Staff Sergeant Cunningham, Sergeant Quigley, Sergeant Leahy, and Sergeant First Class Mayo. Sergeant Leahy testified that First Sergeant Hatley told them, “I’m going to go take care of these guys; I’m going to kill these guys. I’ll do it by myself if I have to; I’m not forcing anybody to go; who’s with me?”³⁵ Sergeant Quigley and Sergeant Cunningham declined and went back to their vehicle. Sergeant Leahy and Sergeant First Class Mayo remained. Sergeant First Class Mayo testified, “The First Sergeant asked us who wanted to assist, and myself and Sergeant Leahy agreed that we’d help.”³⁶ Sergeant Leahy testified, “We then moved to the Bradley; the Bradley dropped ramp; then we pulled them out of the Bradley, sir.”³⁷ First Sergeant Hatley ordered the ramp of the Bradley to be lowered. The ramp slowly came down. First Sergeant Hatley stepped in and grabbed one of the detainees and pulled him up from where he was sitting in the back of the Bradley to the standing position, and then he

passed him down the ramp to Sergeant First Class Mayo, who passed him to Sergeant Leahy. First Sergeant Hatley did the same with the other three detainees.

First Sergeant Hatley, Sergeant Leahy, and Sergeant First Class Mayo pulled the restrained and blindfolded detainees to the edge of the canal where they lined them up. Sergeant First Class Mayo testified, “We just lined them up side-by-side, and they were facing the canal.”³⁸ The three NCOs drew their pistols and aimed them at the heads of the detainees. Sergeant Leahy testified during his court martial that, “We stood them up facing the canal. I got behind the one on the far left.”³⁹

With their pistols pointed at the back of the detainees’ heads, First Sergeant Hatley asked Sergeant First Class Mayo and Sergeant Leahy if they were ready. “And what was the response?” asked the Trial Counsel. Sergeant First Class Mayo answered, “We replied, yes; and then the first round went off.”⁴⁰ Two detainees fell forward onto the ground face-first. The Trial Counsel asked Sergeant First Class Mayo, “The detainee that you shot, what was your intent?” Sergeant First Class Mayo answered, “To take care of him, sir.” The Trial Counsel asked, “Was it-what do you mean by ‘take care of him?’” Sergeant First Class Mayo answered, “To kill him, sir.”⁴¹

The Trial Counsel asked Sergeant Leahy, “What happened when you fired your weapon?” Sergeant Leahy answered, “The detainee that I had just shot, he fell backward onto me. I had to shuffle back just to prevent the detainee from knocking me over. The detainee to my right did not have anyone behind him. He flinched, or moved, or something—he did something weird; it was like a flinch—and, out of instinct. I turned and shot at him, sir.”⁴² That detainee fell to the ground, but unlike the other three detainees, he began to thrash about. The bullet from Sergeant Leahy’s pistol entered in

front of the detainee's left ear. Sergeant Leahy testified, "He [the detainee] fell down; I stood there staring at him. When he was on the ground, he was moaning and making noise."⁴³ When First Sergeant Hatley saw what was going on, he walked over to the flailing detainee, pointed his pistol at his chest, and fired two shots. The detainee stopped moaning and grew silent and still. The three NCOs then removed the blindfolds from the detainees, cut off their zip ties, and pushed them into the canal.

The Trial Counsel asked Sergeant First Class Mayo, "Now, after you moved the bodies into the canal, what happened?" Sergeant First Class Mayo answered, "We then moved back to the COP. "The Trial Counsel asked Sergeant First Class Mayo, "And what happened when you got back to the COP?" Sergeant First Class Mayo answered, "All the Soldiers were brought in, and First Sergeant said that this was for our fallen Soldiers." The Trial Counsel asked, "And did he elaborate on that?" Sergeant First Class Mayo answered, "He just said. 'This is for our fallen Soldiers; if anyone had an issue or if someone started to talk about this, to direct him to the first sergeant.'"⁴⁴

Many of the Alpha Company Soldiers, to include First Sergeant Hatley, believed that the detainees that were recently killed were the same detainees responsible for the deaths of Staff Sergeant Karl Soto-Pinedo and Specialist Marieo Guerrero⁴⁵ a few weeks earlier. Sergeant Leahy testified that "When we got back to the COP, First Sergeant Hatley pulled the whole patrol over by the clearing barrels and said that, you know. 'We went out and we took care of these guys. What was done was done for Sergeant Soto, who had been killed. Sergeant Guerrero, who had been killed, and for all the motherfuckers that think that they can shoot us and get away with it.'"⁴⁶

Analysis

According to a General Court Martial, First Sergeant Hatley, at or near Baghdad, Iraq, on or about 10 March 2007, conspired with two subordinate noncommissioned officers, Sergeant First Class Joseph P. Mayo and Sergeant Michael P. Leahy Jr., to kill four adult male detainees.

After they got to the Bradley, they lined up the detainees, and shot them in the back of the head. When one of the detainees was lying on the ground and making noise, the accused [First Sergeant Hatley] put another two rounds in his chest. Back at the COP after the murders, the patrol went back and the accused gathered everyone around him, and told them that what they had done was for their fallen comrades, and if anyone asked about it, they should direct them to him.⁴⁷

Could First Sergeant Hatley's actions be considered morally permissible? They apparently were not legally permissible, evidenced by his current residence in the USDB at Fort Leavenworth, Kansas, and perhaps, at first glance, they are not morally permissible. However, as was previously stated, the purpose of this thesis is to provide the reader an opportunity to take a second glance and, perhaps, several subsequent glances. This open-ended approach does not, however, preclude the author from providing an opinion at the conclusion.

Thesis

This person-based ethical case study has been prepared in order to examine First Sergeant Hatley's decisions to kill, and influence others to kill, four unarmed detainees from several perspectives. Did First Sergeant Hatley kill those four detainees because he saw it as his moral duty and responsibility to protect, or take care of, his Soldiers? Did his sense of moral duty, which apparently ran counter to the law of war and codes of conduct, adversely affected his moral reasoning? Did he kill those four unarmed

detainees out of necessity? Did he possess the right to self-defense and the defense of his Soldiers?

Although this thesis will attempt to answer these questions, it is not its primary objective. The canal incident was chosen because of its significance, not only to the profession of arms, but to PME. The killings stir up emotions in nearly all who know of it: anger, frustration, condemnation, disappointment and, in some, empathy. Therefore, it is the primary goal of this thesis to engage the heart, mind, and soul of the reader in order to facilitate and ultimately contribute positively to the ongoing PME dialogue. Although this goal may initially seem a bit far reaching, it will undoubtedly facilitated engagement regardless of the reader's ultimate conclusion. It will also require the reader to look beyond the obvious, become aware of social, cultural, and religious bias, and withhold judgment until the conclusion. As was previously stated and that which will be readdressed periodically throughout this work, what follows is not a legal review or analysis, but rather a person-based ethical case study.

It is recommended that the reader choose one of the following three approaches: (1) Accept that First Sergeant Hatley possessed the inherent right to self-defense and did what he did to protect his Soldiers according to his sense of moral duty and thus find his actions to be morally permissible. (2) Remain undecided, but continue reading while entertaining the previously identified preposition for the purpose of advancing the PME dialogue. (3) Quit reading now. In the spirit of scholarly engagement, it will certainly benefit the greater PME dialogue and the profession of arms if the reader chooses to continue.

Introduction to Ethics

Before any discussion of ethical behavior or moral philosophy can be undertaken, the phrases must be clearly defined and their intended use explained. The study of ethical behavior is located neatly within the field of philosophy and rightly so, and because it is “a process of inquiry and critical thinking; it is not about preaching, indoctrinating, or inducting learners into rules of behavior or codes of conduct.”⁴⁸ In other words, ethics is simply an attempt to describe how a person should behave among other people, which at the surface appears to be a relatively simple objective. However, when you take into consideration social, cultural, religious, and contextual factors, the simple rapidly becomes the complex. Pojman and Fieser very neatly define moral philosophy as being a “systematic effort to understand moral concepts and justify moral principles and theories.”⁴⁹ It is important to note the phrase systematic effort. These two words are important for attempting to determine right and wrong behavior and for determining the proper engagement and application of this thesis.

The first key word is systematic, which indicates there exists a process for determining the moral permissibility of an act, similar to that which this thesis will attempt to do concerning First Sergeant Hatley’s decisions and actions. It indicates the importance of thoroughly examining factors associated with a given act in order to determine how those factors may, or may not, have contributed to the completion of the act. This process is similar to a grand jury reviewing the facts of a case to determine if a suspect should be charged with murder or manslaughter or if charges should be dropped altogether. In this example, it is believed a person has brought about the death of another

person, but it is the responsibility of the jury, similar to that which is required by the reader of this work, to evaluate other factors that might have contributed to the death.

The second key word in the Pojman and Fieser definition of moral philosophy is effort. Any discussion of ethical behavior, especially if that behavior occurs during time of war, requires a significant amount of concerted effort, and the more effort, the more accurate the conclusion. Evaluating human behavior is not a passive act. It requires intentional and sometimes exhaustive effort.

As it applies to this thesis and the discussion it facilitates, morals will be considered as being that which attempts to describe principles and rules of right and wrong behavior or behavior commonly accepted by a group of people as being right or wrong. Ethics will refer to the character of an individual. Therefore, what follows will discuss, and attempt to determine, the moral permissibility of First Sergeant Hatley's decisions and actions through a person-based case study.

The Scene

As was discussed in the preceding incident section, Baghdad in the spring of 2007 was reminiscent of an Old West town, particularly in West Rashid. It was hot, dry, dirty, and, of course, dangerous. First Lieutenant Benjamin Boyd, a character witness in the court martial of Sergeant First Class Mayo, testified that Camp Angry Dragon, out of which First Sergeant Hatley and his Soldiers operated, was on a "significant fault line",⁵⁰ between the two major religious factions in Iraq; the Sunni and Shia. What began as an American-led coalition launched on 20 March 2003 to remove the Iraqi regime and destroy its ability to develop and use weapons of mass destruction (WMD) quickly transformed into stability operations to quell sectarian violence and prevent all-out civil

war. Although President George W. Bush's Address to the Nation March 17, 2003 in which he defined the ongoing effort of US Forces in Iraq as helping develop "a new Iraq that is prosperous and free"⁵¹ sounded neat and orderly, it was anything but. Command Sergeant Major Fortune, First Sergeant Hatley's Brigade Command Sergeant Major at the time of the killings, described Alpha Company's operations as taking place during a "very ugly period of time."⁵²

It could be argued that Baghdad in 2007 was one of the most dangerous places on earth. *Stars and Stripes* reported on the toll the operations in that area was taking on First Sergeant Hatley's unit. "Since 2001, no Europe-based unit had been hit harder than the Dagger Brigade during deployments to Iraq or Afghanistan. One battalion lost 25 brothers-in-arms, another lost 20. In all, 59 Soldiers fell. The average age of the dead was just under 24."⁵³ Hiding in and among the civilian populace, the enemy, which was really an ambiguous mix of insurgents, terrorists, and violent criminals, indiscriminately murdered US and coalition forces.

Some of the images of that seemingly perpetual conflict, but certainly not all them, were repeatedly published in newspapers, broadcasted on television news programs, and shared across the internet daily, so much so it seemed to numb the American people to what had become a very deadly situation. According to a *New York Times* article, "Residents in and around Fadhil said they hoped the presence of American Soldiers would quiet the fighting that has trapped some in their homes for weeks. They said their streets and alleys have become a frontline battleground for Shiite fighters from neighborhoods to the northeast, near Sadr City, and Sunni gunmen who have sought to

protect their turf from the Mahdi Army, the militia based in Sadr city that is loyal to Moktada al-Sadr.”⁵⁴ An increase in violence meant an increase in US troop numbers.

Obviously in response to the escalating violence, President Bush announced in 2007 his plan to increase the number of American troops necessary to provide security to Baghdad and the Al Anbar Province.⁵⁵ The President referred to the deployment of 20,000 additional troops, which equaled five brigades, as “the way ahead.”⁵⁶ Most of the surge troops were sent to Baghdad.⁵⁷ President Bush explained that the objective of the troop surge was to achieve a “unified, democratic federal Iraq that can govern itself, defend itself, and sustain itself, and is an ally in the War on Terror.”⁵⁸ This objective would cost many American lives, and the jury is still out on whether or not it was achieved.

The *New York Times* reported, “The operations in eastern Baghdad are to be a centerpiece of the so-called surge of 21,000 troops that many here view it as a last-ditch effort to save the country from all-out civil war.”⁵⁹ The article quoted Brigadier General John Campbell, the deputy commander of coalition troops in Baghdad at the time, as referring to Alpha Company’s AO as being the “focal point for us right now.”⁶⁰ General (Retired) Petraeus, in his January 2007 opening statement during the Armed Services Committee hearing on his nomination to be the commander of U.S. forces in Iraq, testified that, “The situation in Iraq has deteriorated significantly since the bombing this past February of the Al-Askari mosque in Samarra, the third-holiest Shi’a Islamic shrine. The increase in the level of violence since then, fueled by the insurgent and sectarian fighting that spiraled in the wake of the bombing, has made progress in Iraq very difficult and created particularly challenging dynamics in the capital city of Baghdad.”⁶¹

Bombs exploded in marketplaces, neighborhoods, and schools. Bullets and rocket-propelled grenades came raining down from windows and rooftops, and mortars seemed to come from nowhere. It was not uncommon for the hazy Iraqi horizon to be broken by billowing black smoke and the night sky to illuminate with bright flashes of light. The roads, streets, and highways were pockmarked with deep craters, and burnt out vehicles were common features along their shoulders. Waghelstein compared Iraq to the Vietnam War in terms of its length, how it divided people along religious and political lines, and the growing loss of life.⁶² The enemy seemed to be everywhere and nowhere, and the process for what to do with them on those rare occasions they were captured was just as ambiguous.

Baghdad in 2007 was bad and getting worse, and in the middle of it all were the Soldiers of Alpha Company. General Petraeus warned the Senate Armed Services Committee, “The way ahead will be neither quick nor easy.”⁶³ No one more clearly understood how slow and how hard the way ahead would be than First Sergeant Hatley and his Soldiers.

First Sergeant Hatley and his Soldiers were responsible for providing security for their assigned sector in accordance with the President’s directive “to help Iraqis clear and secure neighborhoods, to help them protect the local population, and to help ensure that the Iraqi forces left behind are capable of providing the security.”⁶⁴ First Sergeant Hatley and his Soldiers spent much of their time patrolling the streets of West Rashid in the southwestern corner of Baghdad dodging bullets, rockets, and IEDs while trying to capture armed criminals and transport them to the DHA only to have them released to attack the Soldiers again.

It was clear from the strategic level down to the tactical that US troops were given a mission for which they were relatively unfamiliar and untrained, that was extremely complex, and, according to some critics, unrealistic. There existed little doctrine on how to fight such an enemy, and that doctrine which did exist was not being read and trained on by many of the troops responsible for its application. The lessons learned from the Vietnam conflict were nearly forgotten, and how to fight an insurgent enemy was being written while fighting them. It can be argued that no US troops were asked to do more with less in any in other conflict since Vietnam.

The Detainee Holding Area (DHA)

Apparently influenced by the late 2003 and early 2004 Abu Ghraib embarrassment for the US, a Multinational Forces Iraq (MFI) draft memorandum, dated January 2005, outlined strict DHA procedures for US Forces often operating throughout Iraq. Although just a draft, like much of the Iraq operations that were reactive and executed ad hoc, it was authoritative and enforceable from 2005 through 2007. It outlined the substantial amount of evidence required for the detention of those detained by US Forces, and the requirements were quite significant. The memorandum stated, “Failure to follow these regulations may result in acquittal or premature release of detainees.”⁶⁵ The memo, which was obviously just the tip of the political iceberg that created it, required such a high standard of evidence for confinement that it clearly narrowed the options and ability of US Forces to effectively remove bad guys from the battlefield.⁶⁶ The memorandum required US Forces to treat what was really a battlefield as a crime scene and, like police detectives rather than Soldiers, collect, document, and safeguard physical evidence. These were tasks First Sergeant Hatley’s Soldiers were not adequately trained.

This memorandum essentially gave the DHA authorization and justification to release over eighty-eight percent of the detainees brought to it.⁶⁷ Sergeant Leahy testified, “A lot of times when we found a weapons cache, one of my jobs—well, not my jobs—but a lot of times I would take the pictures of the weapons. I would set them up so that they could fit into one frame, try to get everything in the room into one frame so I could take pictures of them.”⁶⁸ These requirements, apparently intended to prevent another Abu Ghraib and the related embarrassment in the eyes of the American public who were obviously growing weary of war, made the many onerous tasks required of First Sergeant Hatley and his Soldiers nearly impossible to accomplish.

According to an October 2009 interview with CNN, Brigadier General Quantock stated that out of the 87,011 detainees turned into the DHA, 76,985 were released because the Soldiers who detained them failed to meet the DHA evidentiary requirements. Over eighty-eight percent of the detainees turned in were later released.⁶⁹ It is safe to assume the DHA operations, or the lack thereof, that left First Sergeant Hatley and his Soldiers vulnerable to deadly, nearly invisible enemy attacks, was the major contributing factor preventing First Sergeant Hatley from protecting his Soldiers. That is to suggest that if the DHA would have effectively adjudicated and incarcerated the enemy combatants delivered to them by First Sergeant Hatley and his Soldiers, then First Sergeant Hatley and his Soldiers may not have felt as though they had to defend themselves with deadly force. This, of course, like so much of this thesis, is research and experience-based conjecture.

The Enemy: To Be or Not To Be

Field Manual (FM) 27-10, *The Law of Land Warfare*, defines the standards by which US troops will treat detainees. It also describes the prohibition against murder, mutilation, cruel treatment, torture, humiliating and degrading POWs as well as judging and sentencing them without a fair trial.⁷⁰ “Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein,”⁷¹ and it goes on to describe how they shall, if possible, be provided enough food, hygiene, and medical care to maintain good health. The question that must be asked is, were the four men First Sergeant Hatley killed, and influenced others to kill, enemy combatants according to the previously identified definition and subsequent understanding? What was considered enemy at that time were not state actors. They were more often than not armed, religious extremists who were taking advantage of the void in the gutted Iraqi government and overwhelmed US and coalition forces to project terror and violence throughout the AO.

The enemy was similar to those US Soldiers faced a generation before. They were difficult to identify, and even more difficult to eliminate. Vietnam Veteran, Varnado Simpson, who was present during the My Lai Massacre, described the difficulty of combating such an elusive enemy when he told an interviewer, “Who’s the enemy? I can’t distinguish between the enemy; the good or the bad. All of them look the same. That’s the reason they was so different. It’s not like you had Germans over there and Japanese over there. They all look alike; north and the south. So, how can you tell?”⁷² During his retirement ceremony, General (Retired) David Petraeus illustrated the

ambiguous nature of the enemy in Iraq First Sergeant Hatley and his Soldiers were responsible for combating, or, as it were in many cases, enduring.

The essence, the core of our military is and always will be its people: men and women who raise their right hands and recite the oath of enlistment, even though they know that act may result in them deploying to a combat zone where they will be asked once again to put it all on the line, day after day, in crushing heat and numbing cold, under body armor and Kevlar, against resilient, tough, often barbaric enemies; never knowing, as they go outside the wire, whether they'll be greeted with a hand grenade or a handshake, but being ready and capable of responding appropriately to either.⁷³

The enemy First Sergeant Hatley and his Soldiers faced, although they rarely physically faced them, was not conventional. They were not even an Army. They were murderers and terrorists who hid among the civilian populace and preyed upon First Sergeant Hatley and his Soldiers. The ROE, plans, policies, and procedures that treated those terrorists like conventional enemy clearly put First Sergeant Hatley and his Soldiers at risk. In fact, it left them nearly defenseless in one of the most dangerous places on earth among some of the most dangerous people on earth. Colonel (Doctor) Charles Hoge, Director of Psychiatry and Neuroscience at Walter Reed Army Institute of Research, testified to the following at Sergeant Leahy's court martial:

I was profoundly impressed by the level of frequency and intensity of combat; and the fact that these Soldiers in his unit and Sergeant Leahy in particular, were exposed, literally, nearly on a daily basis to sniper fire and direct contact with the enemy. In other words, they were constantly in a state of being revved up and having to be in survival mode from a—from the perspective of combat stress.⁷⁴

Sergeant Leahy's defense counsel asked Captain Dale McFeatters, the former SJA for 2nd Brigade, 1st Infantry Division, if he had ever patrolled with First Sergeant Hatley's unit to see for himself the challenges they were facing. Captain McFeatters said he had and explained that in order for Soldiers to detain a suspected enemy combatant that they would have to complete a detention packet consisting of, but often not limited

to, sworn statements from witnesses, evidence, and photographs of suspects next to weapons. The defense counsel then asked Captain McFeatters, “In a traditional law of war setting where you have known combatants and enemy combatants, do you need these types of detainee packets to take a prisoner of war (POW) if you capture them firing upon you or with weapons in their custody?” Captain McFeatters answered, “Probably not, sir. I’ve never been involved in a—in a traditional conflict where we’re fighting uniformed combatants.” The defense counsel asked. “So, in this type of conflict, the traditional laws of war don’t seem to apply well; do they?” Captain McFeatters answered, “Well, at—at first, no, sir, but the principles are the same. I mean, we face uniformed—non-uniformed combatants—before, it’s just not when the entire enemy is not wearing a uniform.” The defense counsel asked Captain McFeatters, “Do you understand the frustration that members of this unit were experiencing because they had fellow Soldiers dying from IEDs and sniper fire and they were afraid they were from the same people that they were unable to get processed through this system; do you understand that was going on?” Captain McFeatters answered, “Yes, yes, sir. Yes.” The defense counsel concluded his round of questioning by asking Captain McFeatters, “And, so, would you say that the laws of war, at least as they’re being applied in Iraq, may not be working to the safety of our Soldiers out there?” Captain McFeatters answered, “Yes, sir.”⁷⁵

During his opening statements, Sergeant Leahy’s defense counsel illustrated the perilous predicament in which First Sergeant Hatley and his Soldiers found themselves.

The evidence is going to show that when he got up that morning, he didn’t have a choice to just pack his bags and leave Iraq. He was given a mission and it was a legitimate mission. There was no plan to go out and, as the government would like to say, murder Iraqis that day. If anything, it was another day in Iraq where he was just hoping that he would make it to his bunk at the end of the day still alive,

that he survived; hoping that they would not face any IEDs or mortar attacks, or snipers.⁷⁶

Less than two weeks before First Sergeant Hatley decided to kill, and influence others to kill, four unarmed detainees, that elusive enemy killed two of his Soldiers; Staff Sergeant Karl Soto-Pinedo in February and Specialist Marieo Guerrero in March.⁷⁷ Like most of his Soldiers, First Sergeant Hatley was very close to Staff Sergeant Soto-Pinedo and Specialist Guerrero, professionally and personally. Sergeant Leahy testified that “Staff Sergeant Soto was one of the 3rd Platoon squad leaders that was killed by a sniper; Specialist Guerrero was in 1st Platoon as a Bradley driver and was killed by a deep-buried improvised explosive device.”⁷⁸ The prosecuting attorney asked Sergeant Leahy. “And how much time before the events of late March had they been killed?” and Sergeant Leahy answered, “Within a week. The last one had been killed within a week. He got sniped in the head. He lived for several hours afterwards; eventually ended up dying.”⁷⁹ Sergeant First Class Mayo testified during his court martial that, “In April 2007, I lost my first Soldier, Sergeant Mario DeLeon, while conducting a search for a possible cameraman/IED triggerman. He was shot in the head by a sniper. In June 2007, while conducting a patrol, my platoon was hit with an IED. One of my Soldiers, Sergeant Shawn Dressler, died upon arrival at the CSH. Specialist Joshua Brown passed away later that night due to shrapnel to the head and his brain. Specialist Justin Hartley received shrapnel to the head and stomach and was evacuated. Altogether my platoon received 12 Purple Hearts.”⁸⁰

My Lai and the Canal: Different War, Same Enemy

American Soldiers are taught and trained that their enemy is whoever the US government says it is. If the US government says a country is its declared enemy, whether as a result of an official declaration of war or as a presidential mandate, then the American Soldier combats the soldiers of that enemy in accordance with prescribed plans and orders. In most cases, the forces affiliated with the country to which the US has declared war, wear a corresponding uniform and are found in a particular location. Those Soldiers are, according to the Law of War, treated as combatants until they are killed, surrender, are captured, or the war is declared over. Some questions that were asked during the Vietnam conflict and have again been asked during contemporary operations in Afghanistan and Iraq, are what if a war is not declared and an enemy does not wear a uniform. What if there are no frontlines? What if that enemy, that is just as or more lethal than any other conventional enemy, looks like noncombatants? What if that enemy refuses to obey international rules or laws governing war?

Although the two conflicts are different in many ways, some interesting parallels between the canal killings and the My Lai Massacre can be drawn.⁸¹ It is clear that First Sergeant Hatley and his Soldiers were frustrated with the cyclic process of repeatedly capturing the same deadly combatants. First Sergeant Hatley put it this way during his non-sworn statement prior to his sentencing: “You men before me, you know that as Soldiers we have to subject ourselves to stuff that most Americans can’t fathom. We stand out on hot streets policing up the pieces of our Soldiers and our friends and our brothers, just to go back to the combat outpost, collect yourself back up, go back out and do it again four hours later.”⁸²

Both groups of Soldiers often found themselves fighting an enemy with no uniform and no flag during a protracted conflict with an unclear, and arguably, unrealistic, mission. Rielly very accurately describes the pressure First Sergeant Hatley and his Soldiers were under when he wrote, “Apprehension, frustration, and pressure from above are a volatile mix for any organization. Each of these elements in isolation can lead to troubles, especially in stability and support operations. As casualties mount from an unseen, elusive enemy, commanders need to be more visible and exert more influence and guidance. Leaders must assess and monitor the attitudes of their Soldiers and their small cohesive units to determine if there is an unhealthy level of pressure and frustration.”⁸³

For First Sergeant Hatley and his Soldiers, the enemy could be anywhere and look like anyone. In other words, the enemy, by their very nature, was difficult to identify and substantially more difficult to eliminate. This fact caused frustration not only within the ranks, but also among the leadership. According to Peers “traditional communist strongholds and VC [Viet Cong] dominated areas . . . it could be fairly well assumed that every male of military age was a VC of some form or another.”⁸⁴ This confusion at the tactical level is understandable because when First Sergeant Hatley and his Soldiers were finally able to identify an enemy combatant, which was difficult and rare, and if they did not kill that enemy, they would be forced to conduct what was essentially a crime scene investigation, detain them, and deliver them to the DHA with a significantly high likelihood of that enemy would be released to reengage First Sergeant Hatley and his Soldiers. Therefore, it can be assumed First Sergeant Hatley and his Soldiers’ frustration must have multiplied exponentially. “Historical examples of counterinsurgency

operations have shown Soldiers and Marines will become frustrated by the ambivalence of the population they are trying to help and protect. This can frustrate Soldiers and Marines, and disrespect and rough treatment of the population can quickly follow. Incidents in Iraq have led to emphasis on the proper treatment of prisoners, detainees, and civilians, but in a stressful environment attitudes can quickly shift.”⁸⁵ In fact, the word frustration, according to the truest sense of the word, probably does not accurately capture what First Sergeant Hatley and his Soldiers were feeling prior to the killings. This frustration was shared by Soldiers over forty years prior. “Soldiers from Charlie Company 1-20 Infantry in particular were apprehensive and frustrated by the number of casualties the unit had suffered from mines and booby traps and from their inability to establish any contact with the enemy. To the men of Charlie Company, seeing fellow Soldiers wounded or maimed on operations without any way to retaliate led to a mounting frustration.”⁸⁶ This section not suggesting the frustration previously described caused First Sergeant Hatley to kill those detainees, but it is suggesting it most likely diminished his moral decision making ability.

Law and Ethics

Although an exhaustive discussion of ethics, moral philosophy, and international law is beyond the scope of this work, a brief introduction and overview can assist the reader in determining if First Sergeant Hatley’s decisions and actions were morally permissible. This part of the discussion will, undoubtedly, blur the line separating ethics and law, but, as has been previously stated, the purpose of this work is for engaging in, and contributing to, the ongoing PME dialogue. In other words, because law and ethics are often fundamentally related, studying one can assist in the study of the other.

It is true that First Sergeant Hatley's decision to kill, and influence others to kill, four unarmed detainees can be evaluated and judged by others. It is also true that any such evaluations and subsequent judgment is subjected to a variety of worldviews, moral philosophies, legal constructs, personal opinions, emotional responses, and systems such as ethical relativism,⁸⁷ divine command theory,⁸⁸ utilitarianism,⁸⁹ deontology,⁹⁰ and virtue ethics.⁹¹ That is to say, the evaluation and judgment of First Sergeant Hatley's actions on the basis of right and wrong is up to the evaluator, or the reader in the case of this work. Of course, a US Army Court Martial has judged First Sergeant Hatley according to the statutes of military law. This work, and what follows, holds that the reader is the moral judge and jury, and the jury is still out and the judge's gavel has yet to fall. The reality is that neither this work nor the readers' opinion will likely serve as the basis of a legal appeal for First Sergeant Hatley or dramatically change the essence of just war tradition. It can, of course, provide an excellent opportunity for the reader to explore his or her own moral philosophy and ethical decision making process.

One only has to visit a crowded prison or watch the evening news to understand that human behavior requires regulation. The contemporary way in which this is accomplished is through law containing clearly communicated elements of a crime and proportional punishment for its violation. This required regulation of human behavior is as or more important during war than it is at any other time or in any other place.

The process of defining and determining morally permissible behavior is similar to determining guilt or innocence in a court of law. Legal due process requires the fair, impartial, and comprehensive application of rules and principles as they apply to the elements of criminal or civil law. Just as a jury tasked with determining the guilt or

innocence of a person depends on a body of authoritative law under which that person is held accountable, the reader of this work will draw similar conclusions concerning right and wrong; only those conclusions will rely on far fewer tangible measurements and much more on feelings and emotions. The reader of this work is undoubtedly at a disadvantage as he or she does not possess a codified body of law as a guide, but rather only a personal moral philosophy and a worldview.

Law of War

The law of land warfare was developed by civilized nations as a way in which to prevent unnecessary suffering and destruction on the battlefield during time of war. Related to international law, the law of land warfare was developed by the US to regulate its conduct of war as well as attempt to protect civilians, POWs, the wounded, sick, and shipwrecked. Because war, by its very nature, is a violent, chaotic endeavor during which the lines separating good and evil are sometimes gray, a special set of laws have been created to help regulate it and protect the innocent. It can be assumed that without such law, war could potentially grow into an all-consuming catastrophe in which the bad eclipses the good.

Rules Of Engagement (ROE)

Separate from, but consistent with, the law of land warfare, ROE are specific rules applicable to a particular country responsible for governing the standards, conditions, and limitations by which combat force are to operate on the battlefield. Violators of the LOW may be prosecuted by both international criminal tribunals as well as nation-state military and civilian tribunals. In contrast, ROE are codified in national law, and violators are

adjudicated by the nation-state having jurisdiction over the violator according to the UCMJ.

Ethics Training and The Military Culture

It requires much effort on the part of the military institution and its leaders to effectively regulate the ethical behavior of Soldiers, especially in combat. It is not so difficult to train them to shoot, to run and march, to become technically and tactically proficient at their military occupational skill (MOS) or to get a haircut. It is not so difficult to get them to volunteer, commit, and sacrifice. It is, however, quite difficult to require a Soldier to kill an enemy and be subjected to being killed by that enemy as part of their primary duties while simultaneously requiring them to determine for themselves who the enemy is. Anyone who possesses even the most basic understanding of the canal killings understands First Sergeant Hatley and his Soldiers were in a very precarious situation. This fact, in and of itself, obviously does not justify First Sergeant Hatley's actions. Many Soldiers have found themselves in the same or similar situations, and they did not kill unarmed detainees. This fact will, however, contribute significantly to a clearer understanding of what happened leading up to and next to that canal.

Perhaps the very words, creeds, and oaths designed to provide a foundation for the ethical development of US Army Soldiers are sometimes among the most significant factors contributing to First Sergeant Hatley's decisions and actions. *The Army Profession of Arms*⁹² pamphlet describes the five foundations of the Army ethic and addresses major themes exclusively related to the profession of arms. The fourth foundation, *The profession and its Ethic as the core of institutional culture*, explains that "Existing Army artifacts such as the Army Values, the Soldier's Rules, oaths of office,

and other military imperatives all work together in the Ethic as part of the institutional culture.” This thesis is not suggesting there is anything inherently wrong with the Army’s intent to facilitate an ethical culture by identifying how a Soldier should act.

The artifacts *The Army Profession of Arms* pamphlet identifies are sometimes not enough, especially when they are competing against what a Soldier values more. In other words, the Army Values, the Soldier’s Rules, oaths of office, and other military imperatives can potentially pale in comparison to the commitment a person has for someone he or she loves.

Take for example a man who kills another person who threatens his son with death. In most cases, the law and the consequences for breaking it have little or no impact on the father’s decision to protect his son. In this scenario, the moral permissibility of an action is defined from the perspective of the father, and although the father’s actions may not be condoned by the legal system or by the society in which he lives, it is likely understood. Like the Bush preemptive doctrine and the digging beside the road ROE, the father determined the permissibility of taking a human life, an act he would likely have otherwise deemed immoral, based on the greater risk of not acting. That is that the father chose the greater good of his son’s life over the life of the person who threatened it.

Moral Philosophy

If determining the moral permissibility of killing another person was easy, there would be little need for this work and works like it. There would be no need for ethical dialogue, research, or study. There would be no need for lectures, symposiums, or advanced education. There would simply be a collection of rules or laws and expected behavior to be followed with fair and just punishment for failing to do so. There would

simply be moral absolutism, which is the belief that there exist inherent and absolute standards of ethical behavior regardless of the associated circumstances and conditions.⁹³ Society would only need lawyers and courtrooms and could do away with philosophers and classrooms. For most situations, the legal system is sufficient for determining right and wrong. For all others—for that small percent found in the gray area—there is moral philosophy.

Unlike math or science, moral philosophy cannot be disassembled, dissected, studied empirically, or proven. It requires the holistic incorporation of the human heart, mind, and soul. That is why readers of this thesis will undoubtedly be disappointed if they are searching for answers rather than an opportunity to grow, develop, and contribute. Moral philosophy is not absolute. It is simply too complex and depends too heavily on external social, cultural, religious, and philosophical factors. This thesis holds that the laws, rules, regulations, codes of conduct, and virtues espoused by the US Army help to effectively develop an ethical command climate and provide behavioral guidance and restraints for most of the situations in which a Soldier is typically exposed. For the rest there exist conditions that blur the separation between right and wrong; there exists a small gray area on which the books, lectures, and posters have little effect, and in which right and wrong is not so easy to determine.

Just War

Nearly any discussion of PME is a discussion of just war tradition, which holds that violent conflict must meet certain philosophical, religious, or political criteria in order for it to be morally permissible. The two are inseparably related. Attributed to Augustine of Hippo and Thomas Aquinas, just war theory⁹⁴ holds that armed conflict

must satisfy criteria such as proper authority, proper cause, and proportionality. It focuses on the idea of bringing about peace, or, according to utilitarianism, a greater good. There are three primary schools of thought beneath the umbrella of just war theory: jus ad bellum, jus in bello, and jus post bellum. Jus ad bellum is primarily concerned with the justice of war, describing the decision making criteria concerning whether or not to engage in war. Often related to the political and strategic level of war, jus post bellum, which is a relatively recent addition to just war theory, focuses on the post war state. Jus in bello provides moral guidance as well as moral restraints during the conduct of war. This thesis limits itself to just in bello as its purpose is the evaluation and determination of the moral permissibility of First Sergeant Hatley's decisions and actions.

Wartime is obviously significantly different than peacetime in many ways. Some ways are obvious while others are not so obvious. For example, a topic that can seem very clear in an insulated academic environment, far from the bombs, bullets, and blood of war, may not be so clear on the battlefield. The regulations, law, ROE, and code of conduct that govern US Forces during combat operations, rooted in jus in bello theory, hold that it is morally justifiable to kill another human being as long as certain criteria is met. The logical assumption is that because it is war and that both sides are aggressive toward the one another, killing is morally permissible. That is, killing is okay as long as the enemy combatants are armed and possess the ability and intent to fight. This sounds simple enough, but it becomes rather complex when an enemy, who often better fits the criminal or terrorist definition, hides among civilians and snipes defenseless Soldiers or buries large bombs in the road at night. It becomes complex when that enemy takes full advantage of the regulations, laws, ROEs, and code of problematic intended to restrain

US Forces during combat operations in order to enable them to more effectively kill. It becomes complex when a senior NCO must decide between regulations, laws, ROEs, and a code of conduct and the Soldiers he loves and holds himself responsible for protecting.

The Greater Good

Did First Sergeant Hatley kill, and influence others to kill, four unarmed detainees because he believed it would bring about a greater good? In other words, could his actions be deemed morally permissible because by killing those four detainees, who were clearly viable threats, he saved the lives of countless Soldiers who would likely have been killed by those detainees if they were to return to the streets?

It is challenging to train, equip, and deploy Soldiers to a combat zone. Few would argue the contrary. It is even more challenging to combat an enemy that does not fight conventionally. It is particularly challenging when that enemy is often not to be treated as an enemy, but rather criminal suspects with rights and legal due process that require Soldiers to identify, collect, photograph, document, and present an exorbitant amount of evidence before dangerous suspects can be removed from the AO. Soldiers, especially infantrymen like First Sergeant Hatley and his Soldiers, are not policemen. Although they may receive some brief training to help them deal briefly with civil situations, they should, by no means, be considered trained and qualified law enforcement officers or investigators. Sassaman illustrates this reality clearly when he wrote, “Most American Soldiers are trained to use maximum force to destroy an easily identifiable enemy. Waging a counterinsurgency campaign, by contrast, often requires a Soldier to do what might appear to be counterproductive: use the minimum amount of force, not the

maximum, so as to reduce the risk of killing civilians or destroying property. Co-opt an enemy rather than kill him. If necessary, expose Soldiers to higher risk.”⁹⁵

Introduced by the 18th century philosopher Jeremy Bentham (1748-1832) and developed by the 19th century philosopher John Stewart Mill (1806-1873), utilitarianism holds that an action can be considered morally permissible if it results in a greater good.⁹⁶ That is, the right action is that which brings about the best results. A useful way to think about utilitarianism, especially as it applies to First Sergeant Hatley and the killings, is that it is often the process of choosing the lesser of two evils. According to the criminal investigation and court records along with personal testimony, no one claimed they believed First Sergeant Hatley was a murderer. As for those who believed he was guilty of killing those four detainees, none of them believed he did it just to kill, and most believed he did it for a reason, morally permissible or not.

In order to possess a working understanding of utilitarianism for the purpose of this thesis, the reader must understand the normative ethical theory of consequentiality. Consequentialism that is also referred to as teleological ethics holds that it is the consequence of a particular action that serves as the basis for distinguishing if that action is right or wrong.⁹⁷ The three subsets of consequentiality are egoism, utilitarianism, and altruism. Utilitarianism is different from egoism and altruism in that egoism and altruism are agent-focused while utilitarianism is agent-neutral. In other words, an act of utilitarianism is not based on the individual or selfish reasons, but rather the good of other people or a community.

According to Augustine and Aquinas, a just war,⁹⁸ or one that is morally justified, is one that is fought according to proper authority, proper cause, and proportionality. The

assumption is, according to just war tradition, that wars can be fought morally and people can be killed if, by authority and cause, the outcome brings about a greater good. For example, the US led a coalition to invade and occupy Iraq because by doing so, according to National Security Strategy, would eliminate the threat of WMD and thus bring about a greater good of increased US and international security. “We will disrupt and destroy terrorist organizations by direct and continuous action using all the elements of national and international power. Our immediate focus will be those terrorist organizations of global reach and any terrorist or state sponsor of terrorism which attempts to gain or use weapons of mass destruction or their precursors.”⁹⁹ According to this security strategy, it appears as though the greater good that would be brought about by US-led combat operations, which ultimately results in the deaths of many people, is the protection of a national and international population from the threat of mass destruction.

According to just war tradition, and more specifically, utilitarianism, First Sergeant Hatley’s decisions and actions could be viewed as morally permissible because they ultimately saved the lives of his Soldiers and eliminated a viable threat from their AO. It is relatively clear that First Sergeant Hatley, the agent in this case, acted on behalf of his Soldiers rather than himself.

First Sergeant Hatley’s civilian defense counsel illustrated First Sergeant Hatley’s commitment to protecting his Soldiers when he told the court martial panel, “He [First Sergeant Hatley] was the first in the building to make sure there were no IEDs. He went out with his troops on the missions. He wasn’t a sit-back first sergeant. Not only that, but he took care of his Soldiers personally—and their families—and you’ll hear that. He has been the epitome of a first sergeant all the time he’s been wearing the diamond;¹⁰⁰ the

epitome of NCO for 15 years.”¹⁰¹ Although this statement is an opinion, it does illustrate that First Sergeant Hatley’s intent that day next to the canal may have been agent-neutral and thus an example of utilitarianism. It can be assumed that identifying and eliminating an elusive enemy responsible for the emplacement of bombs and shooting from hidden places within a civilian community that kill unsuspecting Soldiers does appear to bring about the greatest amount of good. The potential problem, however, is in the identification process.

Note the latter part of the previously provided definition of utilitarianism: when it becomes clear that another human being no longer recognizes the value of other people’s lives. For the same reason a democratic society possesses a justice systems with impartial juries, due process, and judicial appeals because of the inherent risk of unjustly convicting and punishing an innocent person. An effective legal system, similar to that which First Sergeant Hatley and his Soldiers were risking their lives to one day establish in Iraq, exhausts its ability to ensure justice, and the more significant the consequence, the more extensive and exhaustive the process. A key aspect of legal due process is a checks and balance system designed to prevent a single person from determining the guilt or innocence of a person charged with a crime, especially when that crime is capital.

Hedonic Calculus

Formulated by Jeremy Bentham,¹⁰² Hedonic Calculus is a utilitarianism-based measurement of the amount of pleasure and pain a particular actions will bring about. This simple construct possesses profound meaning. Actions are considered good if they maximize pleasure and minimize pain for the greatest number. Thiroux explains that “ethically assessing a situation is to examine the consequences of an action. If the

consequences are on balance positive, then the action is right; if negative, then it is wrong.”¹⁰³ Bentham suggested it is good to maximize pleasure and minimize suffering. Mill adjusted hedonic philosophy by focusing on maximizing happiness through the determination of the maximum good for the maximum number of people. According to a utilitarian perspective “people have the right and, indeed, a moral obligation to protect innocent lives, their own included, when it becomes clear that another human being no longer recognizes the value of other people’s lives.”¹⁰⁴

Consistent with just war tradition, specifically *jus in bello*, the underlying assumption is that life is of the utmost value, that it should be protected, and that the only justification for taking a life is the protection of more lives. This is exemplified by the contemporary US judicial system requiring, at a minimum, a human life to have been taken before the penalty of state-sanctioned death can be administered, specific circumstances notwithstanding.

The Value of Life

The value of life principle claims that “human beings should revere life and accept death.”¹⁰⁵ The fact that First Sergeant Hatley was charged, convicted, and sentenced to life in prison might suggest that he did not value life. However, it can be argued that the reason First Sergeant Hatley killed those four detainees was because he accepted the value of life principle. That is to suggest that he may have chosen to take lives to save lives. It can be assumed that the end First Sergeant Hatley was attempting to bring about was the safety of his Soldiers, not necessarily the death of four unarmed detainees. So, is it morally permissible to kill another person if by the killing that person a greater good is brought about? This discussion will proceed from here based on the

answer to this question being yes, but only after the additional *jus in bello* criteria are met.

Self-Defense

Most would agree that if someone aims a gun at you, you are morally and legally justified in defending yourself, with deadly force if necessary. According to the hedonic calculus, your actions can be considered good because they maximize the pleasure of you living while minimizing the pain of your family and potential future victims of the man with the gun. It must be noted that the previously introduced hedonic calculus risks over simplifying what is ultimately a complex process. What if the man did not possess a gun or any lethal weapon? Most would agree that you would not be morally or legally justified in shooting him; or would you?

Digging Beside the Road

Is it morally permissible to shoot and kill an unarmed person? According to the US Army during Operation Iraqi Freedom (OIF), it was. As described by Lieutenant Colonel, retired, Nathan Sassaman, one of the ROEs used during the Iraq conflict permitted human targets to be eliminated that were “found digging by the side of the road or highway at night, under the cover of darkness.”¹⁰⁶ Little evidentiary substantiation beyond that which was previously identified needed to exist in order to authorize the killing of a person. The reward of preventing the emplacement of IEDs was apparently worth the risk of killing an innocent person. Sassaman added that “from a tactical standpoint, this made perfect sense. From a moral and ethical standpoint, it was more complicated.”¹⁰⁷ Sassaman’s assessment of the ROE as being complicated has merit.

It can be assumed the departure from the customary ROEs was acceptable to the US military leadership in Iraq because of the increased number of IEDs that were causing the death of countless US and coalition forces were very difficult to combat. Therefore, the assumption that can be made is that previous morally unacceptable behavior can become acceptable depending on the potential consequences as opposed to the existence of absolutism, or a universal right and wrong. It is evident, based on this contemporary example, that the moral permissibility of an act is based more on circumstances, context, and consequences than universal right and wrong, or, as was previously introduced, absolutism.

Self-Defense Defined

The primary element that must be present in order for self-defense to be morally justifiable is that a threat exist which, if not eliminated, would cause serious bodily harm or death and that deadly force is the only way to eliminate that threat. In other words, it must be necessary to kill to bring about the greater good of the protection of self. It is clear through the previous example of the man pointing the gun at you, but maybe not so clear in the digging beside the road example or First Sergeant Hatley's decisions and actions.

Was First Sergeant Hatley using self-defense to protect himself and his Soldiers during combat operations in Iraq in early 2007? Like much of this person-based ethical case study, at first glance it appears as though he was not justified, however, as a critical element of this case study, it is important to take another glance. So, in order for First Sergeant Hatley to be morally justified in killing four unarmed detainees, it must first be

determined if the element of necessity existed. That is, were those unarmed detainees committing a hostile act or exhibiting hostile intent?

Even though the detainees were unarmed and restrained, could they have been exhibiting hostile intent? Could the catch and release by-product of the ineffective DHA have brought about the existence of hostile intent and made them an immediate threat? Could First Sergeant Hatley have been morally justified if the detainees used the situation on the ground—the ineffective DHA, the increased sectarian violence, inadequate leadership at the tactical and operational levels, and the insurgent technique of hiding among the civilian populace—as a way in which to fight First Sergeant Hatley and his Soldiers more effectively? If this were the case, hypothetically speaking, the detainees could be considered a consistent, constant, and viable threat on that particular battlefield at that particular time. It could be that it was the conditions that made those four detainees exhibit hostile intent even during their detention.

It is clear that the enemy who was killing First Sergeant Hatley's Soldiers were not eliminated by their capture and brief detention. It can be argued that the lack of clear mission guidance, unrealistic tactical and strategic goals, and the inability to identify the enemy restrained First Sergeant Hatley and his Soldiers every bit as much as the detainees were restrained at the time they were killed.

Snake in the Grass

Take for example the capture and killing of a poisonous snake in or near a campsite. It is not likely this line of reasoning could withstand the scrutiny of the UCMJ, but it may possess some merit within the confines of this PME discussion. It is not likely many would argue that finding the snake and killing it, regardless if it is an immediate

threat to the camper or not, is unreasonable. Letting it go free, knowing it still possesses the ability, and likely the intent, to reenter the camp to bite the camper, is unreasonable. If the camper is unable to extract the snake to another location or prevent it from returning to the camp, the camper is left with a choice: allow it to live and await its return, or kill it at the time of its capture. Although the detainees were restrained and possessed no ability to harm anyone during their detention, perhaps First Sergeant Hatley was morally justified in killing them preemptively, thus preventing future harm based on the anticipation of the return of the detainees.

Hostile Intent and Hostile Act

It can be assumed First Sergeant Hatley understood that if he turned the four detainees into the DHA as he had done many times before, they would likely be released shortly thereafter, free to blend back into the community to re-engage First Sergeant Hatley and his Soldiers with hostile intent. In fact, according to the officer in charge of the DHA, Brigadier General Quantock,¹⁰⁸ eighty-eight percent of the detainees turned in were later released.¹⁰⁹ Hostile intent is defined as the imminent use of force and includes the threat of force. As was previously identified, it can be argued that the detainees, by their very existence in that time and space, represented an imminent and viable threat to First Sergeant Hatley and his Soldiers.

A civilian police officer, for example, performing his duties within the jurisdiction of the US has very little concern about the possibility that the suspect he or she arrests will return to the streets to re-engage the officer because the judicial system is such that it can reasonable accommodate and adjudicate criminals and their activities. In other words, the judicial system within the US does not operate on a catch and release

system, but rather a catch and keep system, for the most part. It is safe to assume if a court, prison, or jail in the US released nearly ninety percent of the suspects the police risked their lives to bring to justice, that those police would likely handle those suspects differently in the future.

According to *jus in bello* and the LOW, it is morally permissible for a Soldier to apply lethal force against a combatant who possesses the ability and intent to kill. This is referred to as a hostile act, which is an “attack or other use of force such as the launching of a missile or the firing of a weapon.”¹¹⁰ The detainees’ intent to kill First Sergeant Hatley and his Soldiers is evidenced by those actions that brought about their detention in the first place. It is proposed that the detainees likely still possessed the ability to kill First Sergeant Hatley and his Soldiers, and that their ability was only temporarily halted by their detention.

Anticipatory Self-Defense

Chapter VII, Article 51 of the United Nations (UN) Charter states, “Nothing in the present Charter shall impair the inherent right of collective or individual self-defense if an armed attack occurs against a member of the United Nations.”¹¹¹ Although debated, the concept of anticipatory self-defense is recognized by customary international law as a legitimate use of force by nation-states in response to an armed attack “even if that armed attack has not yet fully developed.”¹¹² Dinstein describes anticipatory self-defense, or interceptive self-defense, as force used “after the other side has committed itself to an armed attack in an ostensibly irrevocable way even if the other side has not actually opened fire or crossed the border.”¹¹³ The following use of international law, that is only legally applicable to nation states, is not intended to suggest that an individual Soldier is

subject to them, but rather they are to reveal the commonly accepted moral permissibility of their use within the international community.

Anticipatory Self-Defense Criteria

According to the previous utilitarianism discussion, based on utilitarianism ethics, a key element that must be present in order for the killings of those four detainees to be morally permissible is that they, at the time of the killings, were an immediate and viable threat. Again, at first glance, it appears as though the killings were not morally permissible according to utilitarianism because the detainees were blindfolded and zip-tied. However, as is a key aspect of this thesis, a second glance must be taken. Michael Walzer writes, “Both individuals and states can rightly defend themselves against violence that is imminent but not actual; they can fire the first shots if they know themselves about to be attacked.”¹¹⁴

The decision to change the ROEs in the digging beside the road example was apparently based on the principle of necessity.¹¹⁵ Although analyzing the legality of preemptive self-defense, particularly at the strategic level, is beyond the scope of this thesis, the principles can significantly contribute to the discussion and subsequent understanding of the ethical permissibility of First Sergeant Hatley’s decisions and actions.

Preemptive self-defense is the use of force when an imminent enemy threat or aggression exists. Preemptive self-defense does not require that an attack be imminent, but rather, it is triggered when there is the “conjectural and contingent threat of only the possibility of an attack at some point in the future.”¹¹⁶ In his famous Cuban Missile Crisis Speech delivered 22 October 1962, John F. Kennedy summarized his intent to respond preemptively against the Soviet Union for their movement of nuclear weapons to Cuba

with, “But the greatest danger of all would be to do nothing.”¹¹⁷ Preventive self-defense is military action designed to defeat an enemy attack that is not imminent. It is unlike preemptive self-defense in that it is combat action in response to a known or planned attack. A preventive attack is launched to destroy a potential threat when the manifestation of that threat is not imminent or known, while a preemptive attack is initiated in anticipation of immediate enemy hostility. Although all three—anticipatory, preemptive, and preventive self-defense—contribute to the discussion of the ethical permissibility of First Sergeant Hatley’s actions, for the purpose of accomplishing the objective of this thesis within its scope, what follows will focus on anticipatory self-defense.

In response to the Caroline Affair, which gave legal precedence to anticipatory self-defense, Secretary of State, Daniel Webster, illustrated the importance of a nation’s right to anticipatory self-defense when the threat it faces is “instant, overwhelming, leaving no choice of means, and no moment of deliberation.”¹¹⁸ The theoretical framework by which the Bush Administration justified the invasion of Iraq in 2003, which placed First Sergeant Hatley and his Soldiers in harm’s way, could be the same theoretical framework that morally justified First Sergeant Hatley’s decisions and actions.

So, did First Sergeant Hatley kill those four detainees because he could “point to a palpable and imminent threat”?¹¹⁹ Was his decision based on the likelihood of the detainees attacking his Soldiers at some point in the future after being released from the DHA? Anticipatory essentially “refers to the ability to foresee consequences of some future action and take measures aimed at checking or countering those consequences”¹²⁰ It can be assumed First Sergeant Hatley was able to foresee the consequences of allowing

the enemy to continue to take advantage of the vulnerability imposed by the operational and tactical conditions and the ROE. According to the greater good, the consequences would have been real for First Sergeant Hatley and his Soldiers. He and his Soldiers had conducted memorial ceremonies for two of their fellow Soldiers shortly before the killings, and it can be assumed First Sergeant Hatley believed there existed no other mechanism to prevent more of his Soldiers from suffering the same fate. The reader must remember this thesis is not a legal work or an in-depth discussion of international law, both of which would surely surpass its limits.

The emerging threat doctrine, also referred to as the Bush Doctrine, is an example of the ethical permissibility of anticipatory self-defense according to US elected officials. For the United States, its military, and its people, everything changed after the 11 September 2001 attacks on New York, Washington DC, and Pennsylvania. These changes, some sweeping in nature, included national security policy and a new interpretation of UN charters. The US conducted preventive military action against Iraq in the form of a military invasion and occupation although Iraq had not attacked the US.¹²¹ It appears as though it was the Iraqi Regime's ability, intent, and the anticipated likelihood of future aggression that provided the US, according to the Bush Administration, legal and moral justification to invade and occupy Iraq.

The Bush Administration's National Security Strategy of the United States of America, published September 2002, states: The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the

time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.¹²² The Bush Administration's National Security Advisor, Condoleezza Rice, expounded on the National Security Strategy during a 25 September 2002 interview on the Public Broadcasting Station (PBS) program, *The News Hour*, Rice told the interviewer, Margaret Warner, "It simply wouldn't make sense to sit and wait to be attacked if you thought that you could eliminate a threat."¹²³

It is obvious that one of the primary reasons First Sergeant Hatley killed those four unarmed detainees is because he did not consider them unarmed, but rather constant, consistent, and immediate threats to his life and the lives of his Soldiers as long as they were permitted to exist within the AO for which he was responsible. Perhaps First Sergeant Hatley felt he had no other option. The detainees' existence, it can be argued, was as much a threat as a person digging next to a road at night or the Iraqi Regime. First Sergeant Hatley's potential options will be identified and discussed later in this thesis, but for now, this section will assume that he had reasonably exhausted all other means available to him and that the threat to his Soldiers was "instant, overwhelming, leaving no choice of means, and no moment of deliberation."¹²⁴ Perhaps First Sergeant Hatley believed, "It simply wouldn't make sense to sit and wait to be attacked if you thought that you could eliminate a threat."¹²⁵ Perhaps he was exercising his right to self-defense against snakes. The civilian defense attorney stated during the closing arguments of First Sergeant Hatley's court martial that, "They [First Sergeant Hatley, Sergeant First Class Mayo, and Sergeant Leahy] thought they were doing the right thing. They were protecting their troops "preventative strikes," said Sergeant First Class Mayo"¹²⁶

The problem with this inherent right to self-defense argument is the ability of First Sergeant Hatley to determine the threat beyond a reasonable doubt. Did he possess the ability to know for sure that those four detainees were the men who had engaged and would continue to engage First Sergeant Hatley and his Soldiers with lethal force? Did he possess the intellectual ability to know the truth? Did he possess enough evidence? Did he possess other options to eliminate the threat? Did he have the authority to make the decision? These questions and potential answers are related to the previous discussion of the checks and balance system used by democratic governments designed to prevent a single person from determining the guilt or innocence of a person charged with a crime.

Medzmariashvili explains that the necessity of applying anticipatory force “cannot properly be established through an arbitrary assertion that a threat exists requiring anticipatory action in the view of the party being threatened.”¹²⁷ Perhaps First Sergeant Hatley acted arbitrarily in the heat of the moment by assuming the men he had detained were the same ones who had engaged him and his Soldiers with lethal force. Medzmariashvili offers three principles intended to help determine if anticipatory self-defense is morally permissible.

Principle One

The first step in determining the existence of a threat requiring anticipatory self-defense is to accurately assess the nature and magnitude of the threat. This suggests that the anticipatory use of force should only be applied if the “threat posed is of such gravity to invoke the necessity to use the force.”¹²⁸ An example of this nature and magnitude assessment is the decision to eliminate a potential enemy combatant who appears to be emplacing bombs along the road with the obvious intent of killing friendly military

personnel and civilians. As previously discussed, because IED attacks were so lethal and so numerous, action to prevent their emplacement had to be taken. Therefore, the elimination of one or two potential enemy combatants, even if confirmation was not possible, digging along the road appears to be proportional to, or even exceeding, the nature and magnitude of the consequence for not taking action. The occupation of a country and the removal of a tyrannical ruler who will likely develop and use WMD also appears proportional.

Principle Two

The second principle that must be applied when determining if a threat exists requiring anticipatory self-defense is to determine the likelihood that the anticipated threat will materialize if anticipatory action is not taken. Determining if something anticipated will actually happen in the future is undoubtedly difficult. It is impossible to know for sure if something will actually happen. Some things are more likely to happen according to science, statistics, and experience, but to know for sure is not possible. Take for example the previous snake in the campsite illustration. Although the camper could not conclude beyond a responsible doubt that the poisonous snake would return to bite him, he did know that the snake would likely reenter the campsite and bite and possibly kill him according to his understanding of the snake and its nature.

Rick's statement reveals the ambiguous nature of anticipatory action. "In this respect the potential victim state should consider the advantages of anticipating an attack and on the other hand the credibility of the threat to be realized."¹²⁹ The Bush Administration's decision to invade Iraq in 2003 is an excellent example of the difficulty in anticipating if a threat will materialize. Ricks wrote, "Admittedly, waging preventative

war will always be controversial in the United States. But the threat of it may be precisely what is needed to deal with a belligerent, nuclear-armed North Korea when the regime is on the verge of collapse, or for dealing with the Pakistani nuclear arsenal after the Islamic extremist coup.”¹³⁰

It can be assumed that First Sergeant Hatley and most, if not all, of his Soldiers realized that because the DHA perpetuated the catch and release cycle, that the enemy who shot at them and who were repeatedly detained and released were the same enemy that would shoot at them again, and the likelihood that if that enemy was not eliminated, it would continue to shoot at, and sometimes kill, those Soldiers. This is based on First Sergeant Hatley understanding of the enemy and his nature, much like the snake in the previous illustration. Few would argue that First Sergeant Hatley and his Soldiers did not conclude that there was a clear likelihood the anticipated threat would materialize again unless anticipatory action was taken. Similar to the decision to invade a country based on questionable intelligence or shooting a person holding only a shovel, it certainly appears First Sergeant Hatley anticipated that those four detainees would be released from the DHA and that it was likely they would continue to be a threat unless anticipatory action were taken.

Principle Three

The third and final principle that must be addressed before anticipatory self-defense can be considered morally permissible is the “availability and exhaustion of alternatives to using force.”¹³¹ Before anticipatory self-defense measures can be considered morally permissible, all nonviolent options must be exhausted. For example, before a person digging beside the road at night could be eliminated, local rules were

established and a significant amount of warnings in multimedia format were distributed, which lessened the risk of an innocent person being killed while digging next to a road at night. As was the case prior to the US invasion of Iraq, many US and UN sanctions were established and enforced in order to encourage peace talks and facilitate weapons inspectors to enter Iraq and determine if WMD existed. If after exhausting these peaceful means the threat still remains, the anticipatory use of force can be considered morally permissible. A section dedicated to a more comprehensive examination of First Sergeant Hatley's alternatives is forthcoming.

The Consequences for Not Killing

The civilian defense counsel asked Sergeant First Class Mayo, "You thought shooting those four males would protect your troops on another day, correct?" Sergeant First Class Mayo answered, "Yes, sir." The civilian defense counsel asked, "Sort of a Preventive strike?" Sergeant First Class Mayo again answered, "Yes, sir." The civilian defense counsel asked, "Your own personal application of the Bush Doctrine?"¹³² It could be that the Bush Administration morally justified its doctrine of preemptive self-defense according to a measurement of the severity of the consequences through application of the hedonic calculus. That is to say because of the destructive nature of WMD, the US can be considered morally justified in attacking and occupying Iraq because the consequences for choosing not to act would be Iraq's development and potential use of WMDs. In the same way, because of the likelihood those four detainees would likely be released from the DHA with the intent to kill First Sergeant Hatley and his Soldiers, it is possible First Sergeant Hatley was morally justified in his actions because choosing not

to act would likely allow the detainees to continue to engage First Sergeant Hatley and his Soldiers with deadly force.

It appears as though the evaluation criterion for deciding to act preemptively is relative and scalable. That is to say, the US government reserves the right to defend itself from an anticipated attack although an attack has not occurred and there exists no real evidence it is imminent. Was it morally permissible for First Sergeant Hatley to act in a similar manner? In other words, was what was good for the goose good for the gander?

If the scenario is scaled down and the relative application of the risk involved for not acting is evaluated, then it is possible First Sergeant Hatley was defending himself and his Soldiers from future attacks by eliminating the detainees. Perhaps from First Sergeant Hatley's perspective, the potential consequences for not *taking care of* the detainees were the lives of his Soldiers, and that the killing of the detainees is relatively equal to a full US combat mobilization and subsequent combat operations that cost many human lives and billions of dollars.

Risk Versus Reward

John Brennan, the assistant to the president for Homeland Security and Counterterrorism testified before the Senate Intelligence Committee 7 February 2013, that the US only uses drone strikes for major threats. "We [the United States Government] only take such actions as a last resort to save lives when there is no other alternative in what officials believe is an imminent threat."¹³³ This anticipatory statement from the nomination for the Director of the Central Intelligence Agency (CIA), is obviously based on utilitarianism, and it reveals that, for the US, the moral permissibility of an action is not necessarily based on a set of predetermined criteria (absolutism), but

rather according to a subjective, contextual measurement of the amount of risk or harm anticipated if no action is taken. An evaluation of First Sergeant Hatley's decisions and actions, according to Brennan's description of the US decision making process for the use of armed drones to kill suspected enemies of the state, reveal that First Sergeant Hatley's actions could potentially be viewed as morally justifiable according to the same government that convicted him of murder and sentenced him to life in prison.

Like the US decision to use drones against human targets, First Sergeant Hatley's decisions and actions appear to have been based on a risk versus reward analysis. He may have acknowledged a direct relationship between the increased risk associated with allowing an anticipated enemy to live or die, and that the greater the risk to his Soldiers, the greater the moral risk he was willing to accept. He apparently determined the risk to be high based on how many times he had detained and turned in the same enemy who shot at him and sometimes killed his Soldiers. The reward for protecting his Soldiers appears to have been worth the amount of moral ambiguity First Sergeant Hatley was willing to accept.

The Argument

Premise one of the following arguments holds that First Sergeant Hatley and his Soldiers possessed an inherent right to defend themselves against imminent threats of deadly force, regardless of their status as Soldiers and the rules and regulations under which they served. Premise two holds that because military insurgent activity and sectarian violence were so unpredictable, violent, and costly in human life, and because the significant planning deficiencies at the strategic level of war that created ambiguity at the operational and tactical level, First Sergeant Hatley was limited in the ways in which

to accomplish premise one. Premise three holds that because of premise two, the DHA¹³⁴ was unable to effectively keep the enemy off the battlefield¹³⁵ and prevent them from attacking and killing First Sergeant Hatley and his Soldiers. Premise four holds that because of premise two and five, the detainees could be considered, by their very existence and presence in the AO and regardless of their current posture, imminent threats to First Sergeant Hatley and his Soldiers. Therefore, if premises one through four are accepted, then it can be inferred that First Sergeant Hatley's decision to kill, and influence others to kill, four unarmed detainees was morally justifiable.

The Alternatives

Considering premise two of the previous argument, did First Sergeant Hatley possess any alternative options? Was there anything else he could have done to protect his Soldiers? Is there anything else he could have done that would have eliminated the threat? It must be noted that the viability of the previous argument depends on premise one being true. The following will explore some potential options. This section, like so much of this thesis, is Manual and included to simply round out the analysis and discussion. The identification of First Sergeant Hatley's options is a fundamentally flawed endeavor if the intent for discussing them is to discover truth. This section will undoubtedly depend on a significant amount of armchair analysis. However, it can, if expectations are appropriately managed, provide the reader with a clear understanding of First Sergeant Hatley's moral reasoning and the ethical permissibility of his actions. Some of these potential alternatives are theoretically viable, while others are simply beyond reasonable expectations. They are in no specific order. It is up to the reader to determine which are viable and to what degree.

The Chain of Command (COC)

First Sergeant Hatley could have communicated his concerns with the ineffective DHA process to his chain of command, and thus offered potential solutions according to his position and experience. This is the most common response by those familiar with the killings. It is how the US Army operates. The chain of command exists to identify and solve problems at the appropriate level. Many would suggest that using the chain of command to solve a problem is one of the best qualities of an effective NCO, especially one as senior as First Sergeant Hatley. There have been many instances in which the US Army has changed for the good in response to the recommendation of a senior NCO. The effect this option would have potentially had on First Sergeant Hatley's presumed primary purpose, which is assumed to have been to protect his Soldiers, is difficult to determine.

First Sergeant Hatley's frustration with the chain of command and the process of trying to get the bad guys off the street was evident through Sergeant Leahy's testimony during First Sergeant Hatley's court martial. "Well, First Sergeant [Hatley] had gotten a call on the radio. I don't know what was said; he got very angry at the call." It can be assumed that a senior NCO with the knowledge, expertise, and experience of First Sergeant Hatley did attempt to remedy the problem via his chain of command, and it failed. It would have been unrealistic to assume First Sergeant Haltey did otherwise. Perhaps the DHA operation was too politically sensitive. Perhaps it was overwhelmed like everything else in Iraq at that time. Perhaps what caused the problems, the brunt of which First Sergeant Hatley and his Soldiers would bear, was systemic of leadership and planning failures well above them and their immediate chain of command. That is,

because the conditions in Baghdad and throughout Iraq in 2007 were the result of gross inefficiencies at the strategic level that mired all operations at the tactical level including the DHA, there would have been very little First Sergeant Hatley's chain of command could have done. "For all the intensity of the war in Iraq, one of the most remarkable things is how little American generals prepared the Army to fight it."¹³⁶ It is clear the DHAs were extraordinarily unprepared to detain, process, and adjudicate so many insurgents participating in the escalating insurgent and sectarian violence that was occurring in the city and across Iraq.

As was discussed previously, the situation in Iraq was messy and bordering on out of control. To assume First Sergeant Hatley's chain of command was not aware of the amount of violence occurring in First Sergeant Hatley's AO and across Iraq and that they were unaware of the DHA catch and release cycle would be a bit naïve. By its own admission, the US was building the phase four Iraq plane as they were flying it. That is, the transition from an attacking military force to a policing, sustaining force was deadly, ill coordinated, and, in many ways, disastrous, and the way ahead was indeed, as General David Petraeus warned the Senate Armed Services Committee "neither quick nor easy."¹³⁷

Related to the previous proposed option, this option, at least for First Sergeant Hatley, does not appear to be viable because the problem with the DHA was echelons above his pay grade and the pay grades of the members of his chain of command. The late 2003 and early 2004 Abu Ghraib embarrassment had many negative, lasting effects on the United States and its military services, none of which bore the burden more than those personnel serving in Iraq and Afghanistan. Sweeping changes in the way military

personnel apprehended and detainee suspected enemy personnel followed, and these changes certainly benefitted the enemy more than they did US Forces. The DHA system was ineffective because of the extensive detainee holding procedures which arguably were the result of knee-jerk reactions by political career minded people in leadership positions and, regardless of what First Sergeant Hatley said or did or how many defenseless US Forces died, it was not going to change. First Sergeant Hatley communicating his concerns for the ineffective DHA process to his chain of command, and thus offering potential solutions according to his experience is the textbook answer, but there was very little going on in Iraq at that time that was from a textbook. In fact, the textbooks that would turn out to be helpful were being written at that time. First Sergeant Hatley would have understood this reality and undoubtedly considered this option, but not for very long.

Resignation

Another potential option First Sergeant Hatley appears to have had is to simply resign from his position as the senior NCO of Alpha Company and remove himself from the situation altogether. He could have voluntarily relinquished his duties, responsibilities, and authority as a first sergeant. Any leader in the US Army can voluntarily step down from a leadership position at any time for any reason that likely hinders his or her ability to effectively and safely lead Soldiers. For NCOs, it is a less formal process than it is for commissioned officers. It essentially requires the NCO to notify his commanding officer and request to be removed from the position to which the NCO had been entrusted.

This option may seem viable for one who is not familiar with the rank of first sergeant and the character of the person selected to wear it. Although a court martial panel found First Sergeant Hatley guilty of murder, they did not find him guilty of not caring deeply for the Soldiers for whom he was responsible. They did not find him guilty of not being a professional Soldier, the killings notwithstanding. They did not question his commitment to his unit, the US Army, or his country, all of which was illustrated by his awards, commendations, citations, evaluation reports, and his selection for promotion to the rank of sergeant major. The court martial panel did not find First Sergeant Hatley guilty of not dedicating his life to the profession of arms and risking it on numerous occasions.

First Sergeant Hatley did indeed care about his Soldiers. He had trained them, counseled them, and mentored them. He had prepared them for combat and led them from the front through some of the most dangerous situations imaginable. Few would argue that through First Sergeant Hatley's actions, morally acceptable or otherwise, and through his commitment to his role as a leader, saved the lives of countless Soldiers who would have otherwise not returned home and accomplished many missions. Resigning from his position as first sergeant would have been inconsistent with who he was as a man and as a leader of Soldiers. He would not likely have dishonored himself or the profession of arms by doing what he undoubtedly would have viewed as simply quitting. That simple action would have contradicted his warrior ethos. Consistent with the following discussion of the senior NCO as father-figure, First Sergeant Hatley resigning would have been equivalent to abandoning his family during their time of need. It is interesting to note, the very thing that is likely to have contributed to First Sergeant

Hatley's decision to kill four unarmed detainees is the same thing that would have likely prevented him from resigning.

Mutiny

An option just as unrealistic as resigning is for First Sergeant Hatley to have refused to conduct and subsequently lead his Soldiers during dangerous operations. The factors that would have prevented First Sergeant Hatley from resigning are nearly the same factors that render null and void the option of committing mutiny. Again, this option would have been contrary to his ethos, his identity, and how he viewed his professional and personal responsibility to his Soldiers. Although killing and giving the order to kill unarmed detainees was against military law, it is likely First Sergeant Hatley would have viewed refusing to conduct operations as an unacceptable violation of military law; more unacceptable than murder in this case. He would likely have viewed that option as the most egregious act any professional Soldier could commit.

The Elimination of the Threat

Another potential option First Sergeant Hatley had was the one he apparently chose; the elimination of the threat from the equation. Perhaps the fact that the DHA process was grossly inadequate, to the degree that its leaders could be considered criminally negligent, caused the enemy combatants to remain enemy combatants regardless of their particular status consistent with previous discussions.

Responsibility

This thesis will now transition to a more internal examination of First Sergeant Hatley and his decision to kill, and influence others to kill, four unarmed detainees. The

following will focus on personal and professional attributes that may or may not have been influential. What must be clearly stated here is that many of the decisions, especially those made on the field of battle by leaders such as First Sergeant Hatley, are extremely difficult to make and the risk of those decisions resulting in tragedy is extraordinarily high. This is why the American people require and deserve the best leaders possible. The complexity of First Sergeant Hatley's situation is captured by the answer to a question asked by a guest at the *Moral Courage In Combat: The My Lai Story* lecture on PME. Chief Warrant Officer Hugh Thompson, a Vietnam US Army pilot who positioned his helicopter between US Soldiers firing on unarmed civilians on March 16, 1968 in the village of My Lai was asked: "In your military experience, would you ever think that killing an unarmed combatant would seem like the right thing to do?" Thompson answered:

You have to eliminate the threat. If this person forces a threat upon you or your crew, yeah. I guess you got to take care of them. I'll clarify that a little bit better. If there is a tree line over here and three or four people standing there, and one of them has got a weapon pointing at me. I can live with myself if I take them all out, because I'm not that good a shot probably.¹³⁸

As was previously described, the battlefield is much different than the classroom. A classroom is relatively safe—although that appears to be changing in America—and it is a place where the consequences for holding to a philosophical theory, or judging the behavior of another, results in little real consequences. In a classroom, a student can pontificate, argue, debate, theorize, and, at times, judge, with the only real risk being a GPA decline. The student even has the luxury to change his or her mind at any time for really any reason. The battlefield is much different. It is a place where life and death depend on the decisions of a leader, and that those decisions are grounded in a belief

system and moral philosophy that is simply an academic theory in a classroom. The battlefield, with all of its death and destruction, or fog of war, is a place that makes the application of ethics extremely challenging to apply.

The German writer, Johann Wolfgang von Goethe, describes the challenge in one of his axioms: “To think is easy. To act is difficult. To act as one thinks is the most difficult of all.”¹³⁹ The battlefield is a place where a leader might be required to choose between his moral obligation to protect unarmed detainees and his moral obligation to protect the lives of his Soldiers; a choice no student in any classroom will ever have to make. “When the law becomes egregiously immoral, it may be my moral duty to exercise civil disobedience. There is a general moral duty to obey the law because the law serves an overall moral purpose, and this overall purpose may give us moral reasons to obey laws that may not be moral or ideal. There may come a time, however, when the injustice of a bad law is intolerable and hence calls for illegal but moral defiance.”¹⁴⁰ Was this true for First Sergeant Hatley?

Moral Duty to Protect

It can be assumed few understand the concept of duty better than First Sergeant Hatley. There exists a substantial amount of official documentation suggesting few leaders sacrificed more, cared more, expected more, and accomplished more than he did. First Sergeant Hatley shared with the court martial panel how he felt about leading his Soldiers when he made the following unsworn statement.

None of my Soldiers would ever dispute the fact that whenever we was on a mission I was the first one in the door. The first VBIED, an IED, it didn't matter. I'd leave them in the vehicle and I'd go check it out myself and I'd come back just so they didn't have to place themselves in any unnecessary danger. I'd rather

one guy get killed than more. And I honestly believe that there is no doubt in any of my Soldier's mind, that I would sacrifice my life to save theirs.¹⁴¹

First Sergeant Hatley's apparent heightened sense of duty and commitment to his Soldiers begs the question he, himself, rhetorically asked during his unsworn statement. "I don't know if it's possible to be too close to your Soldiers and to love them too much. My Soldiers were like my sons and there's nothing I wouldn't do to take care of them and protect them."¹⁴² Sergeant First Class Mayo's defense attorney, Michael Waddington, told CNN during an interview, "Soldiers will do what they have to do to stay alive following the law, but if the law and the rules don't protect them, then Soldiers will do what they have to do to make sure they come back alive and their buddies come back alive."¹⁴³

Could it be that First Sergeant Hatley saw the legal requirements and battlefield conditions preventing him from eliminating what he knew to be an immediate and viable threat to the lives of his Soldiers as contrary to his sense of moral duty? Did he believe his actions at the edge of that canal were morally permissible because it was what he believed he had to do? Did he see it as necessary?

Father-figure

According to much of the research collected in preparation for this thesis, it is clear that First Sergeant Hatley was very close to his Soldiers. In fact, it can be argued that he was, perhaps, a little too close to them. He was known throughout the brigade as a NCO who went above and beyond the call of duty to ensure his Soldiers were highly trained, ready for war, and treated fairly. In order for this discussion to progress usefully, the reader must, at least to some degree, accept the proposition that First Sergeant

Hatley's decisions and actions were related to how he viewed his moral responsibility as a leader of Soldiers, particularly during combat operations. The logical construction of what follows will be severely weakened if it is assumed First Sergeant Hatley killed those detainees for some other reason.

Although intended to reveal that First Sergeant Hatley was derelict in his duties, the assistant trial counsel made the following closing statement, which illustrates the type of close relationship that existed between First Sergeant Hatley and his Soldiers:

By virtue of his position and his reputation, he had a great responsibility, the responsibility to lead his men into battle knowing that he was to set the standard to do the right thing, to be that father and to be that mentor to his Soldiers that loved him and help them not just make it home but to make it home as better Soldiers and better leaders and better heroes who were heroes with honor.¹⁴⁴

It can be argued that First Sergeant Hatley was what the assistant trial counsel was suggesting he was not, and that caring so much contributed to his decision and actions next to that canal.

Derived from the Latin word *pater*,¹⁴⁵ a father is primarily an adult male who assumes responsibility for protecting, caring for, and rearing a child. The commonly acceptable western definition of father is one who offers protection, care, and nurturing for another for whom he believes he is responsible. Merriam-Webster defines father-figure as "a person often of particular power or influence who serves as an emotional substitute for a father."¹⁴⁶ The NCO is responsible for leading Soldiers in accordance with the regulations, policies, and mission orders of the US Army. As part of that leadership responsibility, the NCO takes care of his or her Soldiers. The NCO responsibility for taking care of Soldiers is deeply embedded in the culture of the Army and is emphasized throughout its official publications, training programs, and

professional evaluation system. Caring for Soldiers is also rooted in the history of the NCO corps, and it can be argued it is its most important contribution to the profession. Contractors can build and maintain equipment, serve food, and even provide security, but it takes a special person with particular skill, training, and experience to lead and care for Soldiers. According to the previous working definition of father, one can simply replace the word sergeant with father to realize the parallel being drawn and the strong emotional bond that likely existed between First Sergeant Hatley and his Soldiers. A father clothes his children, feeds them, and keeps them safe. Army Regulation 600-20, Army Command Policy, states that, “If leaders consider their Soldiers’ needs and care for their well-being, and if they demonstrate genuine concern, these leaders build a positive command climate.”¹⁴⁷ The first sergeant, like a father, is responsible for feeding, clothing, and keeping safe his Soldiers, often under the most challenging of circumstances. Field Manual 7-22.7, The Army Noncommissioned Officer Guide,¹⁴⁸ explains that “Since today’s first sergeants maintain daily contact with and are responsible for training and ensuring the health and welfare of all of the unit’s Soldiers and families, this position requires extraordinary leadership and professional competence.”¹⁴⁹ The 2009 Year of the NCO describes the first sergeant as being the “life blood of the company; provider, disciplinarian and wise counselor.”¹⁵⁰

None of these publications or any other official communication suggests that any US Army leader should commit any violation of the UCMJ or any other rule or regulation or sacrifice the mission in order to care for Soldiers. What is provided is an understanding of the difficulty that arises when a compromise has to be made between the law and the lives of Soldiers; when the area between right and wrong becomes very

gray. The NCO, particularly the First Sergeant, is the primary trainer of Soldiers. The officer plans and supervises training, but it is the NCO who conducts it; who makes it happen. A well trained Soldier has a much better chance of surviving on the battlefield.

A strong psychological and emotional bond develops between many NCOs and the Soldiers for whom they are responsible. These bonds are developed during training and strengthened during times of war; perhaps sometimes overly developed and strengthened. Combat fosters collective allegiance to fellow Soldiers for many reasons, most significantly because their lives are often dependent on one another. This concept contrasts sharply with contemporary American culture, which is of the most individualistic in the world.¹⁵¹ When asked why do you fight, most Soldiers answer with my buddy. A host for the National Public Radio (NPR), Liane Hansen, asked Princeton University history professor, James McPherson, about his book, *For Cause and Comrades*, why soldiers fight.

Well, I think that once soldiers are in the Army and are facing combat, there's another kind of motive that becomes added onto whatever ideological or patriotic motives brought them into the Army in the first place, and that is indicated by second word in the title of my book, 'Comrades.' There's a kind of bonding that takes place within military units, especially that when they face a common danger, that motivates soldiers to fight so—because they don't want to let their buddies down, and they don't want to lose face in the eyes of their buddies. If they run away, if they abandon their buddies, if they prove themselves to be a coward, they will never be able to hold up their heads again. So that there's kind of a bonding and unity within the unit that is a powerful factor I think for soldiers in all wars.¹⁵²

The bonds discussed that are difficult to break. This kind of bond is clearly illustrated by Michael Bernhardt's statement during an interview for the 1989 television documentary *Four Hours in My Lai*, "There was no one else, but us. We were in this company and this place all alone. We had a company of men that all came from one

country, all came from the same culture, and we were dropped ten thousand miles away, and we felt close that way because there was nobody else to feel close to.”¹⁵³ The closeness that existed between First Sergeant Hatley and his Soldiers is further illustrated by the following excerpt from Sergeant Leahy’s court martial in which the defense counsel cross examined First Sergeant Hatley’s gunner, Private Ramos:

Q. “Now. Private Ramos, would you have laid your life down for First Sergeant Hatley?

A. Yes, sir.

Q. What about Sergeant Leahy?

A. Yes, sir.

Q. What about Sergeant First Class Mayo?

A. Yes, sir.

Q. Do you feel that they would have done the same for you?

A. Yes, sir.

Q. You told me when I interviewed you that you were like a family, all of you.

A. Yes, sir.

Q. What did you mean by that?

A. We were always looking out for one another; we spent 18 months of time together. We’re a family.¹⁵⁴

First Sergeant Hatley possessed few actual family members. He had no children, and the relationship with his second wife was apparently strained by long, repeated deployments.¹⁵⁵ It can be reasonably assumed the US Army was the only family First Sergeant Hatley had. His Soldiers were like his children. It is also reasonable to assume First Sergeant Hatley was emotionally closer to his Soldiers than he was to any other person or group of people in his life. He may have fully embraced the role of fatherhood, consistent with the previous father-figure definition, thus strengthening his moral obligation to those Soldiers beyond that which was expected by the US Army and its laws, rules, and regulations.

The father-son relationship First Sergeant Hatley shared with his Soldiers is illustrated by Sergeant Leahy’s testimony during First Sergeant Hatley’s trial. “We had a

very close relationship. I would consider it a father-son-type relationship. I was extremely close to him, looked up to him, considered him a mentor and one of the greatest men I've ever met.”¹⁵⁶ It is interesting to note that Sergeant Leahy made this statement while testifying as a witness for the prosecution; testimony that ultimately contributed to First Sergeant Hatley's criminal conviction and subsequent sentencing to life in prison. Sergeant First Class Mayo made a similar statement during his testimony at First Sergeant Hatley's court martial. “Well, he was a father to me. He helped me progress in the Army.”¹⁵⁷ First Sergeant Hatley's gunner, Private Ramos, testified that he believed First Sergeant Hatley “was a great leader; he was an awesome infantryman. I tried to learn as much as I could from him, and he could always give you an answer for anything you had. He was always willing to teach.”¹⁵⁸

The Glue

The remainder of this work will examine institutional mechanisms such as duty, honor, country, the NCO and Soldiers Creed, the Seven Army Values, and the Warrior Ethos as a way in which to obtain a clearer understanding of what brought and held First Sergeant Hatley and his Soldiers together and how and to what extent the subsequent relationships may have contributed to First Sergeant Hatley's decision to kill four unarmed detainees.

The Position of NCO

As was previously discussed, the US Army NCO is vetted, selected, and trained to a high standard, progressively at each level as he or she moves up through the ranks. By the time a NCO reaches senior-level leadership positions, the US Army and the American

people can be relatively confident it has a well-trained, morally sound person leading Soldiers. The higher the position in which the NCO serves, the higher the expected standards of conduct and performance.

The Oath of Office

In accordance with Title 10 of the United States Code (USC), Section 502,¹⁵⁹ every person who enlists into the US Armed Forces¹⁶⁰ must take an oath. An oath is a formal commitment to a person or organization, often verbally expressed. They are often required to be taken by a person who is assuming a challenging responsibility often consisting of significant risk.

The taking of the US military oath of office is often a formal, celebratory event, similar to that of a wedding ceremony, only there is no pastor, bride, or groom present. There is, however, a commissioned officer, witnesses, family members, and often senior leadership. The Soldier taking the oath stands not near an altar, but wherever he chooses; in an office, on an airplane, on a drop zone, or sometimes on the battlefield.

When taking the oath, the Soldiers assume the position of attention and face the officer administering the oath. The officer says to the Soldier taking the oath. "Raise your right hand and repeat after me." There are normally two Soldiers holding an open American Flag behind the officer and the Soldier taking the oath. Every Soldier in earshot stops and assumes the position of attention out of respect for the auspicious occasion. Cameras often flash as the officer recites the oath in sections and waits as the person taking the oath repeats it before continuing to the next section. The following is an example of an oath First Sergeant Hatley would have taken:

I. John Edmond Hatley, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.¹⁶¹

The Army Values

The US Army NCO, before assuming the position of First Sergeant, must embrace and, at least on paper, embody the seven Army Values.¹⁶² The seven Army Values are Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage. Soldiers learn these values during their initial training, and they are expected to live according to them throughout their time in the service. These values are expected to be embodied by all Soldiers at all times, regardless of context or circumstances.

The reason the oath of office and Army Values are introduced in this thesis is not to discuss their intended purpose, but rather their application, particularly on the battlefield. It is one thing to formally recite an oath or create and distribute posters with the Army Values on them or require them to be worn on the identification tags of Soldiers, but it is quite another to put them into action, especially in situations in which loyalties become confused and the gray area grayer. As far as this person-based ethical case study is concerned, there are two fundamental problems with the Oath of Office and the Army Values. The problem with the oath is that it is just that; a required oath that is a prerequisite for enlistment or reenlistment. The problem with the Army Values, which are actually virtues describing how a Soldier should behave,¹⁶³ is that they are simply a list of words intended to illustrate how a Soldier should be that are sometimes difficult to define and often more difficult to apply. Another problem with the Army Values is that the application of each of them can potentially justify many types of behavior, some of which

may not be intended. This is not to suggest the Army should not use a list of values, codes, oaths, or creeds. This work acknowledges that they are a necessary part of US military culture that help inculcate its members and instill and maintain good order and discipline.

Take the loyalty value for example. The Army defines loyalty as bearing true faith and allegiance to the US Constitution, the Army, unit, and other Soldiers. What the word loyalty and the brief definition that normally accompanies it fails to explain is how a Soldier prioritizes the recipient of his or her loyalty. In a classroom or an office, where the fog, friction, and death of war is not ever present, loyalty is simply a word; a concept at best. However, there are times, especially for Soldiers, when the word takes on an entirely different meaning. There are times when life and death hang in the balance of its application. For example, it could be argued that First Sergeant Hatley was demonstrating the Army value of loyalty, as well as several others of the Army Values, by personally removing the threat to his Soldiers without regard to the consequences to himself personally or professionally. During First Sergeant Hatley's trial, the assistant trial counsel asked First Sergeant Hatley's former command sergeant major,¹⁶⁴ "Have you ever had any reason to doubt his moral compass?" The Command Sergeant Major answered, "Never."¹⁶⁵ The assistant trial counsel exemplified the caliber of NCO First Sergeant Hatley was when he stated during his closing argument, "There's no question that in this case the accused [First Sergeant Hatley] had a reputation, a reputation as a great Soldier, a great leader, an NCO who was in a position of great importance as the first sergeant of an infantry company engaged in combat operations downrange."¹⁶⁶ The Sergeant Major and assistant trial counsel, along with First Sergeant Hatley's personnel

file and performance record, reveal one of two truths: Either First Sergeant Hatley was a master manipulator with the ability to advance quickly through the enlisted ranks of the US Army by demonstrating the Army Values or there were significant external factors that contributed to his decisions to disregard his oath and many of the Army Values.

After months of being deployed to a combat zone with his Soldiers, after spending nearly every waking moment with them, and after saluting some of their transfer cases as they were shipped back home to their families, could First Sergeant Hatley have become more personally invested in his Soldiers than he was the US Constitution, the Army, and his leaders. It was not the US Constitution or the Army that served with him in combat. It certainly was not the President of the United States or the American People.

Though probably difficult for one unfamiliar with the bonds that bind Soldiers to understand, perhaps it was not the American way of life, democracy, Uncle Sam, or apple pie to which First Sergeant Hatley was most committed to protecting. Perhaps he chose those men he lived with, ate with, slept with, fought with, and, at times, died with over a government that put him and his Soldiers in that dangerous place during that dangerous time with few options to defend themselves. As a reminder, this conjecture is not attempting to condone First Sergeant Hatley and his actions, but rather to discuss and better understand him and them.

The contemporary operating environment in which First Sergeant Hatley and his Soldiers were required to operate, in which violence and death were an inseparable part of their primary duties, was absent of the cultural insulation that helped ensure ethical behavior back at the base or during training. In others words, the absences of the usual checks and balances and the lack of psychological or behavioral health support, created

an environment in which the risk of unethical behavior was increased exponentially.

“Among the My Lai massacre’s principal causes is the fact that a cohesive unit’s values and norms tolerated committing these crimes and also ensured loyalty to the group rather than to the institution, thus condoning silence about the crimes. In the case of My Lai and some recent incidents, it took the courage of individuals outside the organization to report what happened, because no one inside the unit did. Cohesion was too strong.”¹⁶⁷ Leaders often assume Soldiers will place loyalty to the organization above loyalty to their comrades. Historian Richard Holmes’ research provides some contrary information. Holmes writes, “There is every chance that the group norms will conflict with the aims of the organization of which it forms a part.”¹⁶⁸

Perhaps First Sergeant Hatley identified too strongly with his Soldiers when they were in danger, as they often were in Iraq, which tested his commitment to the Army Values, his oath, the law, and even his moral philosophy. This work holds that there are times in which there exists no amount of training, education, indoctrination, oaths, or virtue posters that can prevent a combat leader from taking care of his Soldiers. This work also holds that there are times in which not even the threat of life in prison can prevent a combat leader from taking care of his Soldiers. But does this make his behavior morally permissible? The assistant trial counsel asked Chaplain George, “This represents a real breakdown in leadership, doesn’t it?” Chaplain George replied, “It represents to me that he [First Sergeant Hatley] was trying to solve the problem and remove the violence off the streets.”¹⁶⁹ If First Sergeant Hatley risked his career, his freedom, and his life to protect those for whom he held himself responsible and to bring about the greater good

for his Soldiers, then could his actions, by the US Army definition and according to utilitarianism, be considered morally permissible?

In the spirit of academic discussion, the reader is encouraged to boil down the killings to just the main characters and their decisions. It has been, and will continue to be, the position of this work that it is not so much about right and wrong, but rather more about how the reader determines right and wrong. Could First Sergeant Hatley's decisions and actions be considered morally permissible?

¹Site 14.

²See figure 2: Map of Baghdad, Iraq.

³United States v. Master Sergeant John Edmond Hatley, 472.

⁴Ibid., 1264.

⁵Ibid., 472.

⁶Chaplain (Major) Seth George, Oral Interview, 5 December 2012.

⁷First Battalion, Twenty-Eighth Infantry Regiment (1-28), Fourth Brigade Combat Team (4BCT), Fourth Infantry Division (4ID).

⁸The Bradley Fighting Vehicle (BFV), named after US Army General, Omar Bradley, is a lightly armored troop carrier, operated by a crew of three: commander, gunner, and driver. It can transport six combat equipped Soldiers.

⁹Left-seat-right-seat ride is a metaphorical phrase indicating an opportunity for a leader to prepare his or her replacement to assume responsibility for a military task or activity. The replacing leader rides in the passenger's seat (right) to observe while the leader being replaced drives from the driver's seat (left).

¹⁰United States v. Master Sergeant John Edmond Hatley, 474.

¹¹Sethi Mohallah is an area in the heart of the walled city of Peshawar. US Soldiers commonly referred to Iraqi neighborhoods as Mohallahs.

¹²United States v. Master Sergeant John Edmond Hatley, 478.

¹³Ibid., 583.

¹⁴Ibid., 476.

¹⁵Ibid.

¹⁶Ibid., 477.

¹⁷Ibid., 478.

¹⁸Ibid., 479.

¹⁹Ibid., 517.

²⁰Ibid., 585.

²¹Ibid., 480.

²²A standard issue military first aid bandage triangular shaped that is used to control bleeding or to secure splints.

²³Ibid., 482.

²⁴Ibid.

²⁵Abbie Boudreau and Scott Zamost, CNN Special Investigation, <http://www.cnn.com/SPECIALS/2009/army.tapes/>, CID investigator interviewing Sergeant Leahy. “Army tapes reveal motive in Iraq prisoner killings,” CNN Special Investigations Unit, 18 November 2009 (accessed 3 December 2012).

²⁶Ibid.

²⁷Elaine M. Grossman, “U.S. Officers in Iraq: Insurgents are Repeatedly Captured and Released,” *InsideDefense.com*, Exclusive news and information on national security, posted 7 December 2006 (accessed 5 January 2013).

²⁸United States v. Master Sergeant John Edmond Hatley, 448.

²⁹Ibid., 482.

³⁰Ibid., 486.

³¹Ibid., 447.

³²Ibid., 627.

³³Ibid., 588.

³⁴Ibid.

³⁵Ibid., 474.

³⁶Ibid., 591.

³⁷Ibid., 592.

³⁸Ibid., 474.

³⁹General Court Martial Record of Trial, United States v. Sergeant Michael Patrick Leahy, Jr., Trial Transcripts, 7th Army Joint Multinational Training Command, Rose Barracks, Vilseck, Germany, 2009, 983.

⁴⁰United States v. Master Sergeant John Edmond Hatley, 593.

⁴¹Ibid., 494.

⁴²Ibid., 493.

⁴³Ibid., 494.

⁴⁴Ibid., 599.

⁴⁵Thirty year old Specialist Marieo Guerrero died March 17, 2007 from wounds caused by an improvised explosive device (IED) detonated near his vehicle, Specialist Guerrero was from Fort Worth, Texas (<http://www.militarytimes.com/valor/army-spc-marieo-guerrero/2636201> (accessed 20 December 2012)). Twenty-two year old Staff Sergeant Karl O. Soto-Pinedo died 27 February 2007 of wounds he sustained from enemy small-arms fire. Staff Sergeant Soto-Pinedo was from San Juan, Puerto Rico, <http://www.militarytimes.com/valor/army-staff-sgt-karl-o-soto-pinedo/2598241/> (accessed 20 December 2012).

⁴⁶United States v. Master Sergeant John Edmond Hatley, 499-500.

⁴⁷Ibid., 1178.

⁴⁸David Simpson, *Environmental Education, Ethics and Action: A Workbook to Get Started* (Hertfordshire, United Kingdom: United Nations Environment Program, (UNEP), 2006), 2.

⁴⁹Pojman and Fieser, *Ethics, Discovering Right and Wrong*, 2.

⁵⁰United States v. Sergeant First Class Mayo, 1178.

⁵¹White House, *President Bush Address to the Nation*, 17 March 2003, <http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html> (accessed 2 March 2013).

⁵²United States v. Master Sergeant John Edmond Hatley, 925.

⁵³“Remembering the Fallen: “Dagger” Brigade Soldiers killed in action,” *Stars and Stripes*, 24 January 2008, <http://www.stripes.com/news/remembering-the-fallen-dagger-brigade-Soldiers-killed-in-action-1,73985> (accessed 20 December 2012).

⁵⁴Richard A. Oppel Jr. and Damien Cave, “U.S. Troops Enter Eastern Baghdad as New Push Begins,” *The New York Times*, 12 February 2007, <http://www.nytimes.com/2007/02/12/world/middleeast/12iraq.html?r=0> (accessed 21 June 2013).

⁵⁵Michael Duffy, “The Surge at Year One,” *Time*, 31 January 2008, <http://www.time.com/time/magazine/article/0,9171,1708843,00.html> (accessed 8 December 2012).

⁵⁶White House, *President’s Address to the Nation*, 10 January 2007, <http://georgewbush-whitehouse.archives.gov/news/releases/2007/01/20070110-7.html> (accessed 13 January 2013).

⁵⁷Duffy, *The Surge at Year One*, 33.

⁵⁸President George W. Bush, “Fact Sheet: The New Way Forward in Iraq,” 10 January 2007, <http://georgewbush-whitehouse.archives.gov/news/releases/2007/01/20070110-3.html> (accessed 22 January 2013).

⁵⁹Richard A. Oppel, Jr. and Damien Cave, “U.S. Troops Enter Eastern Baghdad as New Push Begins,” *New York Times*, 12 February 2007, <http://www.nytimes.com/2007/02/12/world/middleeast/12iraq.html?r=0> (accessed 22 January 2013).

⁶⁰*Ibid.*

⁶¹New York Times, “General Petraeus’s Opening Statement at the Armed Services Committee hearing on his nomination to be the commander of U.S. forces in Iraq,” Transcripts published 23 January 2007, http://www.nytimes.com/2007/01/23/world/middleeast/24petraeustextcnd.html?_r=1&oref=slogin (accessed 16 May 2013).

⁶²<http://oudaily.com/news/2009/sep/09/former-army-col-discusses-operations-el-salvador> (accessed 22 January 2013).

⁶³*Ibid.*, 2.

⁶⁴Bush, “Address to the Nation.”

⁶⁵Multinational Forces Iraq (MFI) Detainee Holding Area (DHA) processing memorandum of instruction, 17 January 2005.

⁶⁶*Ibid.*

⁶⁷Brigadier General Quantock, October 2009.

⁶⁸United States v. Master Sergeant John Edmond Hatley, 480.

⁶⁹CNN Special Investigation, <http://www.cnn.com/SPECIALS/2009/army.tapes/> (accessed 3 December 2012).

⁷⁰Geneva Convention, 1949.

⁷¹Convention IV relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Section III. Occupied territories.

⁷²Michael Bernhardt, C Company, 1st Battalion, 20th Infantry Regiment, 11th Brigade, 23rd Infantry Division, *Four Hours in My Lai*, Television Documentary about the 1968 My Lai massacre by the US Army during the Vietnam War, 1989, Yorkshire Television, Broadcasted on ITV as part of Yorkshire Television's First Tuesday documentaries. Narrated by Mark Halliley. Produced by Michael Bilton and Kevin Sim, Directed by Kevin Sim.

⁷³David H. Petraeus' retirement ceremony remarks, 31 August 2011.

⁷⁴United States v. Sergeant Michael Patrick Leahy, Jr., 820.

⁷⁵*Ibid.*, 697-699.

⁷⁶*Ibid.*, 388.

⁷⁷Thirty year old Specialist Marieo Guerrero died March 17, 2007 from wounds caused by an improvised explosive device (IED) detonated near his vehicle, Specialist Guerrero was from Fort Worth, Texas (<http://www.militarytimes.com/valor/army-spc-marieo-guerrero/2636201> (accessed 20 December 2012)). Twenty-two year old Staff Sergeant Karl O. Soto-Pinedo died 27 February 2007 of wounds he sustained from enemy small-arms fire. Staff Sergeant Soto-Pinedo was from San Juan, Puerto Rico, <http://www.militarytimes.com/valor/army-staff-sgt-karl-o-soto-pinedo/2598241/> (accessed 20 December 2012).

⁷⁸United States v. Master Sergeant John Edmond Hatley, 500.

⁷⁹*Ibid.*, 474.

⁸⁰General Court Martial Record of Trial, United States v. Sergeant First Class Joseph Mayo, Trial Transcripts, 7th Army Joint Multinational Training Command, Rose Barracks, Vilseck, Germany, 2009, 169.

⁸¹A parallel that cannot be drawn is one between the two primary leaders respectively. According to official testimony and his personnel file, First Lieutenant

William Calley was at best a mediocre officer and lacked much in the way of leadership and intrapersonal skills, while First Sergeant Hatley was a very competent leader, who, according to his subordinates, peers, and seniors was of the most effective leaders in the US Army.

⁸²United States v. Master Sergeant John Edmond Hatley, 1287.

⁸³Lieutenant Colonel Robert Rielly, U.S. Army, Retired, “The Inclination for War Crimes,” *Military Review* (May-June 2009): 21.

⁸⁴W. R. Peers, *The My Lai Inquiry* (New York: W. W. Norton and Company, 1979), 236.

⁸⁵*Ibid.*

⁸⁶*Ibid.*, 3.

⁸⁷No principles are universally valid. All moral principles are valid relative to cultural tastes. The rules of the society serve as a standard.

⁸⁸Moral standards depend on God who is all-knowing. Any act that conforms to the law of God is right. An act that breaks God’s law is wrong.

⁸⁹Actions are judged right or wrong solely by their consequences. Right actions are those that produce the greatest balance of happiness over unhappiness.

⁹⁰Emphasis is on moral rules and duty.

⁹¹Morals are internal, emphasizing living well and achieving excellence.

⁹²*The Army Profession of Arms*, 2012 (Center for the Army Profession and Ethic (CAPE), Combined Arms Center (CAC), TRADOC, October 2011), 37.

⁹³*Ibid.*

⁹⁴*Bellum iustum.*

⁹⁵Sassaman, *The Warrior King*, 34.

⁹⁶*Ibid.*, 202.

⁹⁷*Ibid.*, 222.

⁹⁸*Bellum iustum.*

⁹⁹The White House, *The National Security Strategy of the United States of America* (Washington, DC: Government Printing Office, September 2002), 6.

¹⁰⁰US Army First Sergeant Rank Insignia consists of three chevrons above three arcs with a lozenge positioned in the center between chevrons and arcs. The lozenge is commonly referred to as a diamond.

¹⁰¹United States v. Master Sergeant John Edmond Hatley, 449-500.

¹⁰²Ross Harrison, “Jeremy Bentham,” in *The Oxford Companion to Philosophy*, ed, Ted Honderich (Oxford: Oxford University Press, 1995), 85-88.

¹⁰³*Ibid.*

¹⁰⁴*Ibid.*

¹⁰⁵*Ibid.*, 88.

¹⁰⁶*Ibid.*, 87.

¹⁰⁷*Ibid.*, 88.

¹⁰⁸October 2009.

¹⁰⁹CNN Special Investigation, <http://www.cnn.com/SPECIALS/2009/army.tapes/>.

¹¹⁰United States v. Master Sergeant John Edmond Hatley, 106.

¹¹¹Chapter VII of the United Nations (UN) Charter, Article 51.

¹¹²*Ibid.*

¹¹³*Ibid.*

¹¹⁴Walzer, *Just and Unjust Wars*, 74.

¹¹⁵Megi Medzmariashvili, “Pre-emptive self-defense against states harboring terrorists” (RGSL Research Papers, No, 4, 2011).

¹¹⁶*Ibid.*, 111.

¹¹⁷Graham Allison, *Essence of Decision, Explaining the Cuban Missile Crisis* (New York: Addison Wesley Longman, 1999), 212.

¹¹⁸United States v. Master Sergeant John Edmond Hatley, 106.

¹¹⁹*Ibid.*, 111.

¹²⁰*Ibid.*

¹²¹The Bush Administration's preventive military operations is a topic that is hotly debated and likely will continue to be for some time.

¹²²United States v. Master Sergeant John Edmond Hatley, 106.

¹²³The White House, National Security Strategy of the United States of America.

¹²⁴Irving H. Bartlett, *Daniel Webster* (New York: W.W. Norton and Company, Inc., 1981), 223.

¹²⁵Condoleezza Rice is the 66th United States Secretary of State: 26 January 2005-20 January 2009.

¹²⁶United States v. Master Sergeant John Edmond Hatley, 1197.

¹²⁷Medzmariashvili, 30.

¹²⁸*Ibid.*

¹²⁹*Ibid.*

¹³⁰Ricks, *Fiasco: The American Military Adventure in Iraq*, 233.

¹³¹*Ibid.*, 30.

¹³²United States v. Master Sergeant John Edmond Hatley, 612.

¹³³John Brennan testimony before the Senate Intelligence Committee, 7 February 2013.

¹³⁴Caused the catch and release cycle.

¹³⁵The battlefield was essentially neighborhoods and city blocks occupied by enemy insurgents hiding among the civilian populace.

¹³⁶Ricks, *Fiasco: The American Military Adventure in Iraq*, 233.

¹³⁷New York Times, "General Petraeus's Opening Statement, Armed Services Committee hearing on his nomination to be the commander of U.S. forces in Iraq," Transcripts published 23 January 2007, http://www.nytimes.com/2007/01/23/world/middleeast/24petraeustextcnd.html?_r=1&oref=slogin (accessed 16 May 2012).

¹³⁸United States Naval Academy, Stockdale Center for Ethical Leadership, *Center for the Study of Professional Military Ethics* (CSPME), http://www.usna.edu/Ethics/publications/documents/ThompsonPg1-28_Final.pdf (accessed 16 May 2013), 18.

¹³⁹Johann Wolfgang von Goethe, *Selected Poems*, trans., John Whaley (Illinois: Northwestern University Press 1998), 122.

¹⁴⁰Pojman, *How Should We Live?: An Introduction To Ethics*, 11.

¹⁴¹United States v. Master Sergeant John Edmond Hatley, 1287.

¹⁴²*Ibid.*, 1286.

¹⁴³CNN Special Investigation, <http://www.cnn.com/SPECIALS/2009/army.tapes/>. (accessed 22 January 2013).

¹⁴⁴United States v. Master Sergeant John Edmond Hatley, 1286.

¹⁴⁵Merriam-Webster's Collegiate Dictionary, 11th ed. (MA: Merriam-Webster, Inc., 2009), 456.

¹⁴⁶*Ibid.*

¹⁴⁷Headquarters, Department of the Army, Army Regulation (AR) 600-2, *Command Policy* (Washington, DC: Government Printing Office, 18 March 2008), 2

¹⁴⁸Formerly the Training Circular (TC) 22-6.

¹⁴⁹Headquarters, Department of the Army, Field Manual (FM) 7-22.7, *The Army Noncommissioned Officer Guide* (Washington, DC: Government Printing Office, October 2002), 2-21.

¹⁵⁰2009, The Year of the Noncommissioned Officer (NCO), www.army.mil/yearofthenco.

¹⁵¹G. Hofstede and G. J. Hofstede, *Cultures and Organizations: Software of the Mind* (New York: McGraw-Hill, 2005).

¹⁵²National Public Radio (NPR), Transcripts published 29 May 2005, <http://www.npr.org/templates/story/story.php?storyId=4671512> (accessed 16 May 2013).

¹⁵³Michael Bernhardt, C Company, 1st Battalion, 20th Infantry Regiment, 11th Brigade, 23rd Infantry Division, *Four Hours in My Lai*, Television Documentary about the 1968 My Lai massacre by the US Army during the Vietnam War, 1989, Yorkshire Television, Broadcasted on ITV as part of Yorkshire Television's First Tuesday documentaries. Narrated by Mark Halliley. Produced by Michael Bilton and Kevin Sim, Directed by Kevin Sim.

¹⁵⁴United States v. Sergeant Michael Patrick Leahy, Jr., 624.

¹⁵⁵Since his incarceration in 2009, First Sergeant Hatley and his most current wife divorced.

¹⁵⁶United States v. Master Sergeant John Edmond Hatley, 453.

¹⁵⁷*Ibid.*, 1285.

¹⁵⁸United States v. Sergeant Michael Patrick Leahy, Jr., 622.

¹⁵⁹Headquarters, Department of the Army, Army Regulation (AR) 601-210, *Active and Reserve Components Enlistment Program* (Washington, DC: Government Printing Office, 2011).

¹⁶⁰Ernest E. Fisher, Jr., *Guardians of the Republic* (Stackpole Books, 2007). http://www.amazon.com/Guardians-Republic-Ernest-F-Fisher/dp/081172784X/ref=sr_1_1?ie=UTF8&qid=1355288358&sr=8-1&keywords=guardian+nco.

¹⁶¹Headquarters, Department of the Army, Army Regulation 601-210.

¹⁶²United States v. Master Sergeant John Edmond Hatley, 222.

¹⁶³*Ibid.*, 234.

¹⁶⁴Former Command Sergeant Major of 2nd Brigade Combat Team (2BCT).

¹⁶⁵United States v. Master Sergeant John Edmond Hatley, 926.

¹⁶⁶*Ibid.*, 1337.

¹⁶⁷*Ibid.*, 243.

¹⁶⁸Richard Holmes, *Acts of War: The Behavior of Men in Battle* (New York: The Free Press, 1985), 323.

¹⁶⁹United States v. Master Sergeant John Edmond Hatley, 2333.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Chapter 4 Summary

It is possible that the most significant reason First Sergeant Hatley killed those detainees is because he did not consider them unarmed, but rather constant, consistent, and immediate threats to the lives of his Soldiers, and that by doing so, he fulfilled his personal and professional obligation? First Sergeant Hatley appears to have exhausted all other means available to him to eliminate the threat and bring about a greater good. It appears as though he did what he had to do out of necessity. This, and what has been presented in support of it, provides a possible explanation for First Sergeant Hatley's decisions and actions, but it does not necessarily provide moral justification. Chapter Four presented the following concise argument:

Premise one of the following arguments holds that First Sergeant Hatley and his Soldiers possessed the right to self-defense against imminent threats of deadly force, regardless of their status as Soldiers and the rules and regulations under which they served. Premise two holds that because military insurgent activity and sectarian violence were so unpredictable, violent, and costly, and because the significant planning deficiencies at the strategic level of war that created ambiguity at the operational and tactical level, First Sergeant Hatley possessed few ways in which to accomplish premise one. Premise three holds that because of premise two, the DHA¹ were unable to effectively keep the enemy off the battlefield² and prevent them from attacking and killing First Sergeant Hatley and his Soldiers. Premise four holds that because of premise three, the detainees could be considered, by their very existence and presence in the AO and regardless of their current posture, imminent threats to First Sergeant Hatley and his Soldiers. Therefore, if premises one through four are accepted, then it can be inferred that First Sergeant Hatley's decision to kill, and influence others to kill, four unarmed detainees was morally permissible.

Chapter 5 Summary

The purpose of this chapter is to provide a brief summary of the findings from chapter 4, an interpretation of those findings, and their implications for the US armed services, specifically the US Army during times of war. This section will also describe some unexpected findings and provide recommendations for further study. This thesis is intended to engage the reader concerning the topic of PME through the examination of a critical, contemporary ethical situation. The primary question upon which this ethical case study was constructed is what caused a competent first sergeant to kill, and influence others to kill, four unarmed detainees, and could his actions be considered morally permissible? This thesis was divided into three primary sections. The first section provided a detailed summary of the events leading up to and during the killings. The second section analyzed First Sergeant Hatley's decisions and actions in an attempt to gain situational understanding of his ethical decision making process. The third section evaluated those decisions and actions within an PME context.

It is clear First Sergeant Hatley and his Soldiers were placed in an untenable position. They were asked to perform police duties with limited training and experience in an attempt to combat increasingly violent sectarian aggression with few options available to protect themselves from deadly threats. This thesis reveals a complex, often contradictory mix of events, circumstances, and policies that kept First Sergeant Hatley from achieving his moral obligation to his Soldiers. There does not appear to be a single factor that caused him to kill, and influence others to kill, four unarmed detainees, but rather a series of tragic events, some occurring simultaneously.

It was the contrast between a murderer and a man who risked everything to protect those for whom he was responsible that was the catalyst for this thesis and that which inspired the author to search for truth in the gray areas. The basic facts provided within this work reveal the pressure cooker in which First Sergeant Hatley and his Soldiers were contained and an analysis of those factors in an attempt to determine if they morally justify First Sergeant Hatley's decisions and actions. It was this pressure that revealed that the same attitudes, beliefs, and values that define a leader as being capable and effective are sometimes the same that can cause that leader to make decisions in violation of rules, regulations, and law.

Implications

The implications of this thesis is the awareness of the increasing need for ongoing professional dialogue concerning PME; dialogue that will effectively contribute to a better understanding of the complexity of ethical behavior as well as those factors that can contribute to a leader doing what he or she must to fulfill his or her moral obligation and how that behavior can run counter to what the US Army considers ethical. This thesis also reveals the importance of understanding a Soldier's true moral framework and decision making process, which can enhance the overall education of US military leaders and Soldiers alike as well as help restrain them during combat. This work indicates that leaders should focus more on moral understanding and awareness than moral education, the previous being much more realistic and beneficial than the latter.

Recommendations

It is important this work serve as an example of how to contribute to the larger PME dialogue among the members of the profession of arms, particularly its leaders. It is recommended that the reader not only continue to engage this thesis, but other such works in an attempt to obtain the best possible understanding of ethics during time of war, a topic that is elusive by its very nature. Because this thesis is a part of a larger whole, it is expected the reader will be left with questions far exceeding the answers gained. That is to say that unanswered questions are a fundamental part of this work, and if the reader continues to ask related questions, the work has achieved its goal.

Summary and Conclusion

In the spirit of academic discussion, the reader has been encouraged to boil down the killings to just the main character and his decisions and actions. It is, and will continue to be, the position of this work that it is not as much about determining right or wrong as it is about how the reader determines right or wrong.

With that said, were First Sergeant Hatley's decisions and actions morally permissible? From a pure utilitarian point of view, it appears as though they were. However, neither the US military nor the government it serves operates from a pure philosophy of any kind. As has been thoroughly illustrated and discussed throughout this thesis, there are simply too many factors involved for such a simple analysis and conclusion, the primary being the human condition and its propensity for error. It takes concerted effort to arrive at a conclusion, and there must always be awareness that the conclusion is inconclusive and should be subjected to further scrutiny.

As was also previously identified in this thesis, the author holds himself responsible for providing his conclusion, although it must be remembered that it is only one individual perspective and one contribution to a much larger PME discussion. The following conclusion took much deliberation and much vacillation before its completion, and even as it was being written, the author felt the desire to change his mind.

Most would agree that First Sergeant Hatley was not a murderer prior to the events that transpired in Iraq. It is clear he did not pay for his own plane ticket, fly to Iraq, put himself in one of the most dangerous places in that country, and patrol the streets while watching his Soldiers being killed by a nearly invisible enemy. It is true that the information presented herein provides much clarification concerning the events leading up to and during the killings, they do not, however, conclusively reveal the actions to be morally permissible in and of themselves. The problem with the logical argument presented in chapter four and that which was again presented in this concluding chapter is its first premise; that First Sergeant Hatley and his Soldiers possessed a universal right to self-defense. Soldiers are not civilians. They are different, not because of what they do, but because of why they do it. Soldiers, by their very nature, forfeit, to varying degrees, many rights afforded civilians. For example, a Soldier does not have the right to break the law of war because of circumstances during the conduct of war. Although the reader, especially those familiar with the profession of arms, will likely empathize with First Sergeant Hatley's situation, it is assumed few will condone his decisions and actions, legally or morally.

Necessity

At the conclusion of his book, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Walzer writes, “I have left the hardest question for last. What are we to say about those military commanders who override the rules of war and kill innocent people in a supreme emergency? Surely we want to be led at such a time by men and women ready to do what has to be done—what is necessary; for it is only here that necessity, in its true sense, comes into the theory of war.”³ Walzer makes an excellent point concerning necessity. It appears as though First Sergeant Hatley did what he did out of necessity, but however noble and courageous his actions might appear, it does not make them morally permissible; better understood, but not permissible. Although apparently a rhetorical statement, Walzer’s question is a good one: what are we to say?

What Are We To Say?

Although the previous argument makes logical sense, especially from a utilitarian perspective, it does not appear to provide moral justification for First Sergeant Hatley’s decisions and actions. While it clearly illustrates the immense challenges First Sergeant Hatley and his Soldiers faced in Iraq and may provide some justification for a civilian, it does not morally justify First Sergeant Hatley. For the same reason First Sergeant Hatley was in that precarious, deadly situation is the same reason his actions were not morally permissible. He was a Soldier.

Bloody Noses or Dirty Hands

If the US is to suffer a bloody nose, even if that bloody nose is induced by the US, it is the American Soldier who suffers it. That is the way it is. It is a fundamental aspect

of Soldiering. Soldiers do the bleeding, and no matter how much blood is lost, it is not the Soldier who changes the rules. That right belongs to those the Soldier has sworn to defend by a system that Soldier has sworn to support. The consequences are simply too great. This is not to suggest First Sergeant Hatley's decisions and actions are not tragic; they are indeed.

When First Sergeant Hatley made his decision to kill those four detainees, he not only dirtied his hands, he tarnished what it means to be a Soldier. Even with all the evil present on the battlefield, there still exists no amount of evil that can justify a Soldier not acting like a Soldier. During time of war, there sometimes exists gray space between utilitarianism and absolutism, but even in the darkest of gray, there still exists lines that are not to be crossed. The professional Soldier accepts the reality of death during the conduct of war, and regardless of how his or her life is threatened, it does not permit indiscriminant killing of unarmed people. It is not the enemy who defines a Soldier, it is the Soldier and his or her actions on the field of battle. Soldiers sacrifice more, endure more, hurt more, and bleed more than the citizens they have sworn to protect.

Walzer writes, "On the other hand, we cannot ignore or forget what it is they do. The deliberate killing of the innocent is murder. Sometimes, in conditions of extremity, commanders must commit murder or they must order others to commit it. And then they are murderers, though in a good cause."⁴ Perhaps this is true in First Sergeant Hatley's case. Perhaps it is best that this thesis—this small part of a greater PME dialogue—conclude with First Sergeant Hatley is a murderer for a good cause. "In domestic society, and particularly in the context of revolutionary politics, we say of such people that they have dirty hands. I have argued elsewhere that men and women with dirty hands, though

it may be the case that they had acted well and done what their office required, must nonetheless bear a burden of responsibility and guilt.”⁵ Walzer appears to be suggesting that when a person kills unjustly for the sake of justice, he or she is morally judged and condemned, and this judgment and condemnation is likely internalized within the person who has killed unjustly. “Decent men and women, hard-pressed in war, must sometimes do terrible things, and then they themselves have to look for some way to reaffirm the values they have overthrown.”⁶

First Sergeant Hatley was, and likely still is, a decent man, and he is likely reaffirming the moral values he felt were necessary to overthrow as he bears that burden at the USDB at Fort Leavenworth, Kansas. First Sergeant Hatley “killed unjustly, let us say, for the sake of justice itself, but justice itself requires that unjust killing be condemned.”⁷ Maybe there is some other title besides murderer that could be affixed to First Sergeant Hatley, some other label that would fill that gray area between “collective survival and human rights”⁸ in which he will forever be positioned.

Final Thoughts

Perhaps there will be a day when there will be no gray areas; when there will be only black and white. That time obviously has not yet come, and until it does, all we have are our thoughts, beliefs, experiences, and, most importantly one another with which to develop, apply, and amend them. Until the days of black and white, we will have to evaluate human behavior and pray we can do so with as much truth as possible, a clear awareness of our bias and the human condition, an open mind and a willingness to engage with difficult with situations. The best defense against mistakenly judging a

persons' behavior, especially a Soldiers' during time of war, is constant engagement of the PME and subsequent dialogue until war is outlawed and gray becomes black or white.

¹Caused the *catch and release* cycle.

²The battlefield was essentially neighborhoods and city blocks occupied by enemy insurgents hiding among the civilian populace.

³Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (Jackson, TN: Basic Books, 2006), 325.

⁴Ibid

⁵Ibid.

⁶Ibid.

⁷Ibid.

⁸Ibid., 326.

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